DOCUMENT RESUME

ED 248 414 CG 017 686

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| TITLE | Oversight Hearing on Child Support Enforcement. Hearing before the Subcommittee on Select Education of the Committee on Education and Labor. House of Representatives, Ninety-Eighth Congress, First Session (New York, New York). |
| INSTITUTION | Congress of the U.S., Washington, D.C. House Committee on Education and Labor. |
| PUB DATE | 12 Sep 83 |
| NOTE | 104p.; Some pages are marginally reproducible because of small print. |
| PUB TYPE | Legal/Legislative/Regulatory Materials (090) |
| EDRS PRICE | MF01 Plus Postage. PC Not Available from EDRS. |
| DESCRIPTORS | *Child Abuse; *Child Neglect; Compliance (Legal); Divorce; Fatherless Family; Federal Legislation; *Government Role; Hearings; *Law Enforcement; Stress Variables |
| IDENTIFIERS | *Child Support; Congress 98th |

ABSTRACT

This document presents the text of the Congressional hearings on nonpayment of child support, examining the link between nonpayment and child abuse, and focusing on possible remedies. The content of the proposed National Child Support Enforcement Act (H.R. 3354) is discussed. Written statements from 12 individuals are included, dealing with the difficulties in enforcing current child support rulings, welfare spending, and court jurisdictions. Statements from custodial mothers having difficulty receiving child support are provided. A description of the work of FOCUS, For Our Child and Us, a New York State funded paralegal agency concerned with the enforcement of court awarded child support, is also presented. Collection methods for child support payments are proposed, including state clearinghouses, wage attachment, jail, and interception of tax refunds. (JAC)

# OVERSIGHT HEARING ON CHILD SUPPORT ENFORCEMENT



## HEARING

BEFORE THE

## SUBCOMMITTEE ON SELECT EDUCATION

OF THE

## COMMITTEE ON EDUCATION AND LABOR
## HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

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HEARING HELD IN NEW YORK, N.Y., ON SEPTEMBER 12, 1983

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Printed for the use of the Committee on Education and Labor





U.S. GOVERNMENT PRINTING OFFICE
29-805 O WASHINGTON : 1984

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# OVERSIGHT HEARING ON CHILD SUPPORT ENFORCEMENT

MONDAY, SEPTEMBER 12, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SELECT EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
*New York, N.Y.*

The subcommittee met, pursuant to call, at 11 a.m., at 26 Federal Plaza, room 305-C, New York, N.Y., Hon. Mario Biaggi (acting chairman) presiding.

Members present: Representatives Biaggi and Roukema.

Mr. BIAGGI. The meeting is called to order. I convene this hearing of the House Select Education Subcommittee on the No. 1 children's right issue of 1983, the nonpayment of child support. Among other areas of discussion today, this subcommittee will seek to examine the link between the nonpayment of child support and child abuse. At the very least, the nonpayment of child support contributes to economic abuse for more than 13 million children in this Nation.

My distinguished colleague, Marge Roukema of New Jersey, a leader in this fight, will be arriving shortly to participate in this hearing. We conduct this hearing on the same day Congress convenes. Before the end of the year, Congress is expected to take action on a bipartisan bill aimed at improving our woeful collection records in this area.

Of special interest to the subcommittee is expected House action on H.R. 1904, the Child Abuse Prevention and Treatment Act reauthorization bill, which includes an amendment I authored calling for a study to examine the possible link between nonpayment of child support and the physical abuse of children.

The 1974 Child Abuse Act, which is landmark legislation, which I was proud to have authored, has been central to making child abuse a crime subject to prosecution in many States. In this same fashion, we should seek to make nonpayment of child support a crime, and attach hard-hitting penalties for those who break the law. Such a sanction would not only put more teeth into our collection efforts, I contend that it would be a red light for many potentially errant fathers.

Our knowledge of why parents beat their children is, in large part, rooted in the economic status of families. We also know that women tend to be abusers more often than men based on the simple fact that they spend more time with their children. The stress of child rearing is often aggravated by reduced economic cir-

cumstances. The simple economics of divorce make it critical that we establish whether or not nonpayment of support contributes to abuse.

More importantly, the fate of children, financially abandoned by wage-earning parents who can best be termed scoundrels, could be improved if we establish this link.

What we do know is that child support delinquency is a national problem of enormous breadth. Consider these facts:

Mothers witness a devastating loss of 73 percent of their income after divorce, which directly impacts upon their children;

Of the 4 million women who should be receiving child support, only 46.7 percent are collecting the full amount;

The number of delinquent parents has risen to 21.2 million, 380,000 more than in 1978;

Thirteen million children are now being cheated out of over $4 billion in child support payments;

The average child support award owed by fathers is $2,460, the average paid is $1,520.

What is especially appalling to me are the number of individuals, who are self-sufficient and who have a good income, that consistently and deviously evade all payment. This problem is made worse by the fact that the Federal child support program, due to its structure, encourages collections from AFDC parents. The program does little to encourage or reward States who collect from non-AFDC parents.

We do know that failure to pay is not related to income. One recent study found that men who never paid child support at all had higher incomes than those who made partial payments. Collections must continue to focus on this group of wealthy individuals. If we will not tolerate a multinational corporation skirting its tax responsibilities, then we must also be intolerant of people with six-figure incomes who evade their child support responsibilities.

The administration has proposed legislation that will tighten up and improve upon existing collection strategies. In testimony before the House Ways and Means Committee last month, Secretary Heckler reiterated the Administration's commitment to legislation that will not only improve collections, but will also marshall all levels of Government, Federal, State and local, to better coordinate their efforts to make deadbeat dads pay up.

The legislation, H.R. 3546, is scheduled for markup later this week and I am confident that the testimony we receive today will help us in shaping the final legislative product.

Briefly, the proposed legislation authorizes States to collect child support payments by using three techniques; wage withholding, quasi-judicial and administrative methods, and tax refund interception.

The bill also reduces the Federal share of the program from the current 70 percent to 60 percent. Finally, it allows the Secretary of Health and Human Services to write regulations spelling out how these procedures should be undertaken by States.

I applaud the administration's timely response to this issue in H.R. 3546. As I said before, President Reagan, when he served as Governor of the State of California, had enacted into law legislation that would deal with this matter. I have several suggestions

for improvement, including making certain that there is not a reduction in funding for this program.

The $592 million that Federal Government spends now to support State child support collection activities is clearly inadequate if we are to ask more of this system. We cannot track down deadbeat fathers while pinching pennies.

I also will work to insure that those regulations necessary to implement the new law will be minimal, and the law as specific as possible. The recent decision of the Supreme Court nullifying the legislative veto places a greater responsibility upon Congress to write laws precisely as we want to see them carried out. Otherwise, we have little recourse since we cannot legislatively disapprove bad regulations.

The economic well-being of children must remain of paramount concern to us. Nonpayment of child support continues to or exacerbates a form of abuse which is just as heinous as physical abuse.

In 1974, we were sufficiently revolted by stories of the physical abuse of children, and the landmark Child Abuse Prevention and Treatment Act was born. Today, we should be equally appalled by the reports of nonpayment of child support to act in a timely fashion to pass legislation that will put teeth into the collection process.

I welcome the distinguished guests and witnesses we have assembled today, and I look forward to hearing their testimony. Clearly your recommendations will be given serious consideration, because we have a common and mutual objective, and that is the best interest of the children.

I am hopeful that we can distill this testimony in a fashion that will be productive and supplement the committee's work that will be reporting the legislation out this week.

As I said earlier, we are joined by Congresswoman Marge Roukema, and she has arrived sooner than I expected. As I said before, and I say again, Congresswoman Roukema has been a very distinguished and vigorous leader in this undertaking and I know that she has discussed this matter with the White House and was instrumental in having the White House come forth as quickly as it did. No doubt the Administration would have come forward in any event, given the past record of the now-President, when he served as Governor of California. Congresswoman Roukema.

Ms. ROUKEMA. Thank you, Mr. Chairman. It is indeed a pleasure to be here today to participate in these hearings and to thank you and to thank Mr. Biaggi for his untiring efforts in seeking remedies to this child support problem.

This hearing is an indication of your concern for the millions of children who are the innocent victims of a system that does not work. The subject of child support, delinquency and defaults has recently become the subject of national debate.

The public is shocked to learn the facts of this shameful situation and the consequences of callous parental neglect. Yet with all the attention to the problem thus far, there has been little focus on possible remedies, and therefore this hearing is much needed to stimulate public dialog.

I will not repeat the alarming statistics. I am sure they have been well documented before the committee to date. But, clearly,

the statistics do indicate that all is not right and that we need meaningful reform.

Having reviewed the statistics myself and following months of analyzing the existing system, I concluded that anything short of fundamental reform would be holding out a false promise and bring only marginal improvement and continue a costly inefficient superstructure of State and Federal bureaucracies.

Therefore, I introduced H.R. 3354, the National Child Support Enforcement Act, which enjoys bipartisan support of 54 cosponsors. My bill would require States to implement and enforce laws to collect child support through mandatory wage withholding from the time that a legal child support decree is ordered.

Should a State fail to comply, the Secretary of Health and Human Services would be empowered with the authority to withhold partial or full payment of Federal welfare moneys.

Let me be more specific about the key provisions. The key requirement is that delinquency is not permitted to occur before withholding takes effect under my bill. Why should the custodial parent wait 2 months or more before support is received?

The bills do not stop coming. The children need to eat and to be clothed. And the waiting time adds to the emotional tensions. Additionally, and I believe it equally important, with delinquency, that is when you permit delinquency under a collection program, there comes the need to continue complex and costly enforcement systems.

It must be clearly understood that H.R. 3354 would not in any way affect existing State divorce or alimony laws or the judge's determination of the level of support. There is no infringement here on State jurisdiction. Nor would this bill prejudice further judgments made on an appeal of the spouse through the State court system. It affects only legally determined child support under State jurisdiction, and, Mr. Chairman, I think that became increasingly important and will become an increasingly important point as the subcommittee continues with its consideration because there has been a question of States' rights and its involvement, questions raised by the subcommittee.

Second, my bill would force States to work together in collecting out-of-State cases. Currently, we theoretically have a reciprocal system between the States, but in practice it does not work.

Under my bill, the States which do not cooperate would risk losing Federal welfare contributions. The rationale for this provision is, I believe, obvious, in a mobile society where people move from State to State. And with regard to the administration's bill, they have recognized the need for reciprocity, but in my opinion have not put in meaningful restrictions and penalties that will enforce compliance, and I think it needs to be strengthened.

This legislation would cover all child support cases, welfare and self-supporting families alike. In my opinion, this feature of nondiscrimination, and by the way, this is a major change in all the bills, it will cover welfare families as well as self-supporting families, is an essential reform. Fairness and commonsense require it. Self-supporting families frequently must turn to the welfare programs after months of nonsupport.

I firmly believe that in order for a new enforcement system to work, we must have one that is easy for the States and the legal system to administer. Of all the bills pending before the House Ways and Means Committee, I believe that mine is the most direct and purposely so and therefore easier to administer.

It uses existing mechanisms and sets up no new bureaucracy. This system would relieve our crowded court dockets, use existing State agencies more productively, and keep many families off the welfare rolls.

I believe it is a sensible way to right the wrongs of the present unworkable system. It will bring needed assistance to more than 4 million children who are the innocent victims of parental neglect, and make it easier for them to cope with the other emotional stresses of divorce and abandonment.

No mother and no child, no family should have to bear the burden of endless and debasing legal battles before they can receive the rightful support which due process has decreed.

Child support is not a voluntary commitment, it is a legal, and I stress legal, obligation, with all levels of Government having a responsibility to uphold.

Mr. Chairman, again I want to thank you for your convictions in this respect and your leadership, and for permitting me the opportunity to stress the need for a national program of enforcement in this regard. And I look forward to this distinguished list of witnesses that you have assembled. And I am sure it will be meaningful to all of us as we seek to enact legislation this year. Thank you.

Mr. BIAGGI. Thank you, Ms. Roukema. I could not agree with you more. Clearly what is necessary is legislation that has teeth in it. The nondiscrimination feature I think has been addressed by Secretary Heckler. I know that happened as a result of your persuasion. But, clearly, we cannot permit the system to continue to function in the same meaningless way, where hundreds of thousands of parents who are charged morally and legally with the obligation of support continually evade their responsibility. Unless we do something forceful and meaningful, the whole legislative exercise will be one of futility.

Our first witness this morning will be Irwin Brooks, Assistant Commissioner of the Office of Income Support, New York City Department of Social Services. Mr. Brooks.

Mr. BROOKS. Thank you, Congressman Biaggi, Mr. Chairman, Congresswoman Roukema, staff. I appreciate the opportunity to come before you to speak about our direct experience in running a child support program in one of the major urban areas of the country, with probably one of the largest caseloads, both in welfare and in nonwelfare.

Incidentally, I have submitted written testimony which I would appreciate being entered into the record.

Mr. BIAGGI. Without objection, so ordered.

Mr. BROOKS. Thank you.

[Prepared statement of Irwin Brooks follows:]

PREPARED STATEMENT OF IRWIN BROOKS, ASSISTANT COMMISSIONER, OFFICE OF INCOME SUPPORT, HUMAN RESOURCES ADMINISTRATION, NEW YORK CITY

I am Irwin Brooks, Assistant Commissioner of Income Support of the Human Resources Administration of the city of New York. I am pleased to appear before you today to discuss child support enforcement in New York City.

In May, the Census Bureau reported that more than half of the American men legally obligated to pay alimony or child support are in arrears on all or part of their payments. Only 46.7 percent of about 4 million women who were supposed to receive child support payments in 1981 received the correct amounts. Clearly, Federal legislation is needed to strengthen our existing child support programs, to extend enforcement tools used for Aid to Dependent Children (ADC) cases to all support cases and to provide better methods for enforcement of support orders for all child support cases. Such initiatives are vital if we are to help mothers and children collect the nearly $4.5 billion that goes unpaid annually by fathers under court orders or legal agreement.

New York City is committed to an effective and efficient child support program. We are currently monitoring child support payments for 30,000 public assistance (ADC) families and an additional 50,000 non-public assistance families. The following data provides a picture of the size of our program:

We receive 60,000 new ADC cases, locate 28,000 absent parents and refer 17,000 cases to court in a year.

We have 41,000 court appearances which result in 5,400 paternity orders, 6,000 support orders, and, additionally, 3,600 cases are referred to court for enforcement each year.

We provide support-related services, other than collection, to 36,000 non-ADC cases annually.

New York City, like other large urban areas, faces many obstacles to increasing child support collections. The size, density, and mobility of our population make it difficult to locate many absent parents. And, we have a high proportion of parents who are too impoverished to pay support. Yet, since 1975, we have made significant gains in our program. Collections for our public assistance families have increased from $12 million in fiscal year 1976 to our current figure of $23 million in fiscal year 1983. An additional $29 million is collected and processed annually for non-public assistance families.

As we plan for the future progress of the Child Support Enforcement Program, it is essential to focus on the needs of the child. When we speak about children, we should be talking about all children, not only those supported by public assistance. Under current law, better mechanisms are available for the enforcement of ADC support orders than are available to non-public assistance familes such as more stringent payroll deduction provisions, IRS and State Tax Intercept programs and legal support in handling ADC cases. But the average monthly payment for a family not on public assistance is only $180. These custodial parents who are struggling to support their children need equal access to the same enforcement mechanisms. If we do not effectively assist these families in collecting support from absent parents, they too may come to depend upon government financial support.

HRA is pleased that much of the proposed federal legislation—H.R. 2374, H.R. 3354 and H.R. 926—which is presently before Congress, seeks to create stronger and more effective means of child support enforcement for both public assistance and non-public assistance families. We have tried several of these proposed enforcement mechanisms in New York and I would like to discuss some of these proposals in light of the experience in New York City.

TAX REFUND INTERCEPT

HRA supports expanding the collection of past-due support from Federal tax refunds for public assistanee families to all families. This is one of the most successful methods of collecting past due child support. In New York, such tax set-offs for public assistance families have resulted in significant collections. For example, we collected $3 million in New York City from Federal income tax refunds for tax year 1981 and an additional $3 million for tax year 1982. For families that are not on public assistance, where a higher proportion of absent parents are actually employed, tax set-offs should prove particularly successful.

In addition, New York State has begun a tax refund intercept program, which is in its first year of operation. It has already generated $2.1 million in support collections for New York City. Therefore, we support federal legislation to expand the Federal tax set-off procedure to non-ADC families and we plan to urge the State legislative to create a similar mechanism for State tax refunds.

MANDATORY WAGE WITHHOLDING

HRA strongly supports a system of mandatory wage withholding for the collection of child support obligations for both public assistance and non-public assistance families. In New York, we have an income deduction system which is implemented after a delinquency in support payments. In cases where we have such orders, collections increased by 50 percent. In public assistance cases, the deduction is mandatory but is not made until the support payment arrears equal or exceed the total amount of monies payable in making a specified number of payments determined by the court in the support order. In non-public assistance cases, the court may order an income deduction where the respondent is three payments delinquent and has not proved an inability to make payments. However, our experience has shown that courts are reluctant to require income deduction orders in non-public assistance cases.

Mandatory wage withholding should provide an even more effective system for child support collection, since withholding could begin at the inception of the support obligation rather than after a delinquency in payments. This will guarantee a steady stream of needed funds to support children in all families with absent parents.

One concern we have with expanded wage withholding is the associated administrative costs. In order to keep administrative costs as low as possible, we recommend that employers forward payments withheld from wages directly to custodial parents who are not receiving public assistance. We are concerned that the imposition of fees for services provided to non-ADC families would ultimately result in lower support payments. Any reduction in the amount of a payment could force a family on to public assistance. Direct payments will also avoid delays in making funds available to custodial parents.

In addition, we recommend that any proposed legislation for withholding wages conform with the Consumer Credit Protection Act's limitations on garnishment of wages, to insure protection for the absent parent.

We also support the proposals that require the withholding of child support from income other than wages. This is particularly important where absent parents have sought to avoid fulfilling child support obligations by claiming no wage earnings while deriving income from sources other than wages. For these cases, the courts should require posting of a bond for child support or insurance for such payments.

WAGE INFORMATION

HRA supports legislation to require States to collect individual wage information and provide access to such information for the purpose of child support enforcement. In New York, wage information is collected by the State Department of Taxation and Finance through the Wage Reporting System (WRS). We strongly support expanding the use of WRS to non-public assistance cases where it is even more likely that the absent parents are actually employed.

H.R. 926, the Reducing Error in Income Support Programs Act of 1983, would require States to collect and retain wage information within their Departments of Labor in order to qualify for Federal assistance for unemployment compensation. This would result in a duplicate system for a state such as New York, which has its wage reporting system within the tax department. Thus, we recommend that this legislation be ameneded to allow states flexibility in locating its wage reporting system.

In addition, we recommend that States be authorized to exchange wage information in order to collect support from parents employed outside the State in which dependent children reside. Our experience has shown that some States place a low priority on out-of-state cases. Facilitating the exchange of information among States is an important step towards aiding in our support collection efforts. We support the development of projects to aid the collection and exchange of information among states.

MILITARY

It is often difficult to obtain needed information from the military to facilitate collections. We are required to contact each individual installation when attempting to locate an absent parent in the service. As a result, we must wait for requests to be channeled through to the proper responsible party, and wait an inordinate amount of time for a response which may not be forthcoming. We recommend that a central office within the Department of Defense be available for assisting child support agencies. Names would be submitted and the central office could locate the appropriate parties.

MEDICAL INSURANCE

In New York, our Family Court Act provides that when a social services official is the petitioner, any order of support must require the absent parent to exercise an option for additional health insurance coverage where his employer or organization will pay a substantial portion of the premium. At a time of increasing medical costs, requiring absent parents to provide health insurance where it is available at a reasonable cost, aids in keeping families off both ADC and Medicaid. We support federal legislation which would require states to seek medical support for children on ADC. In addition, we recommend that such health insurance coverage to required for non-public assistance families as well.

QUASI-JUDICIAL AND ADMINISTRATIVE PROCEDURES

It has been the experience of some states that quasi-judicial or administrative procedures result in higher collections and lower costs. A number of the legislative proposals we are addressing today would require States to develop quasi-judicial or administrative procedures to establish and enforce support obligations. This would be very difficult to implement in New York, where jurisdiction over support and paternity issues is placed in the Family Court by our State Constitution. While we favor expanded use of hearing officers within our Family Court, we believe that removing support cases from the Court system entirely is a complicated issue. Therefore, we recommend that any legislative directive on establishing administative procedures allow a state the flexibility to fashion a procedure within the framework of existing State Constitutional mandates.

REIMBURSEMENT FOR ADMINSTRATIVE COSTS AND INCENTIVE PAYMENTS

We are pleased that Congress rejected, earlier this year, the President's proposal to restructure the IV-D program by eliminating both reimbursement of administrative expenses and incentive payments based upon actual support collections. The Administration's most recent proposal (H.R. 3546) would reduce the federal match from 70 percent to 66 percent for administrative expenses and repeal the 12 percent incentive payment. The impact on New York City would be a loss of $5.5 million: $2.6 million in reimbursement for administrative costs and $2.9 million in incentive payments. Although awards for exemplary performance are proposed in lieu of the current incentive payment, it is not clear that this will increase funds because of the 10 percent drop in the federal reimbursement rate.

If reimbursement of administrative expenses and incentives are reduced, it would certainly inhibit the momentum and growth we have all experienced. The benefits and accomplishments derived from an effective IV-D program cannot be measured by dollars collected alone. These also include the establishment of paternity, the Parent Locator Service and the monitoring of non-ADC cases which require expenditure of time and money. In addition, public assistance cases which are closed as a result of IV-D efforts save approximately $1.8 million annually. These cases are closed due to the discovery of the absent parent in the house, the absence of the child from the home or that the custodial parent is actually employed. While we are making progress each year, more has yet to be accomplished and continued federal reimbursement is essential to the future success of our program.

Thank you for the opportunity to share our concerns on child support enforcement and our support for legislation to insure that children be financially supported by their parents. New York City has given a high priority to its Child Support Program and is committed to further improving it with your help and support. Thank you.

## STATEMENT OF IRWIN BROOKS

Mr. BROOKS. The remarks that I am making now are to emphasize some of the points in the written testimony.

We, in New York City, feel very strongly about the need to support all children. In New York City we find that our payments to the nonwelfare family runs about $180 per month, which means that these are borderline cases, and can in fact become welfare situations, if in fact the support enforcement is not accomplished.

Mr. BIAGGI. About $180 per month?

Mr. BROOKS. About $180 per month is an average payment to a nonwelfare family for support of their children. The average payment for a welfare case is approximate $120 per month.

Our concern is that while the administration and the IV-D program has called upon us to do many, many things, in the child support area, we are only measured in one area and that is the collection of support payments for welfare families, which is a recovery system. We are required to establish paternity. And in New York City we have a caseload of 67 percent in out-of-wedlock cases, so that our job of establishing paternity is quite intense.

We do provide services to the nonwelfare families, and we monitor 50,000 support orders for nonwelfare families. We provide about 36,000 various services to the nonwelfare families.

Mr. BIAGGI. What do you mean you monitor support services for nonwelfare families? What does that fact mean?

Mr. BROOKS. We receive the support order from the family court for all orders issued in support cases, both welfare and nonwelfare. We are assigned the obligation of monitoring all support orders coming out of family court.

Mr. BIAGGI. What does that mean? Does it mean just looking at it?

Mr. BROOKS. No. It means the collection of the money, the accounting of the money, the turning around and sending the check to the family, so that we are very heavily involved in a process of rendering the service to the nonwelfare family.

Upon advice to us from the nonwelfare client or petitioner that payments are not being received, then we start an enforcement action against the respondent, the absent parent.

Unfortunately, we do not have the teeth nor the tools to really do an adequate job in this area. We do not have the same tools for the nonwelfare families as we have for the welfare families. And that is in New York State we have mandatory payroll deduction order. Upon the missing of two or three payments, and that is left to the discretion of the judge, we do not have to go back into court. We send out a 15-day due process notice, and if the respondent does not make restitution of the money he owes, then we serve the order to his employer.

Mr. BIAGGI. Suppose he is self-employed?

Mr. BROOKS. If he is self-employed, we do not have a contingency payroll deduction order. And in this area I would like to make two recommendations to overcome that problem, and I think it is a problem for a lot of people who are not employed, but do have income from other sources.

I suggest that we propose the requirement that a bond be issued for a year in time, and a secondary possibility the—is to require insurance be taken out against that payment. And I think there is one State in the union that has started this. I believe it is Texas, where the insurance companies have now developed insurance against support payments.

Mr. BIAGGI. Why not spell that out for the record, as well as our own enlightenment, the process?

Mr. BROOKS. Basically the individual who is not employed, but is self-employed or has other means of income, to take out an insurance policy to guarantee that the support payment will be made.

Mr. BIAGGI. Why should he do that, if he can avoid payment as a self-employed?

Mr. BROOKS. Because the court should order that.

Mr. BIAGGI. So if the court orders that he pay, and he does not pay, how can you extract money from him?

Mr. BROOKS. Then he posts a bond right up front.

Mr. BIAGGI. Suppose he refuses to pay the bond?

Mr. BROOKS. Throw him in jail.

Mr. BIAGGI. That is a point. How many times does a judge put him in jail?

Mr. BROOKS. In New York City, I have been in this program for almost 7 years, and I do not know of any respondent being jailed for the failure to pay support.

Mr. BIAGGI. So what you are talking about is a whole exercise.

Mr. BROOKS. Well, I think that there can be some sort of Federal attachment of requirements to this particular area.

Ms. ROUKEMA. Mr. Chairman, I think this would be a good time for me to make some comment on this subject. My bill actually does require a bonding system. I am not familiar with the insurance proposal, but I do think a bonding system makes sense.

Now, with respect to throwing people in jail, we have had some experience in New Jersey, which was done primarily to dramatize the situation, but what you get is the old debtor's prison syndrome. You know you throw people into debtor's prison, when they cannot pay their bills. But what I think has to be done is possibly penal action such as jailing in certain cases. But I think, more importantly, there should be regulations that really give the Department of Health and Human Services some strong muscle here.

Mr. BIAGGI. Like what?

Ms. ROUKEMA. Let me respond it in the form of a question. I know how I come down on this, but my bill is not perfect, nor is any of them, and the reason we are here today is to hear what the experts have to say.

I would like to ask this question. Is it possible for the penalties to the municipalities and the States be enforced through regulation rigidly by the HHS to the extent where the responsibility of the State to work out these problems and the IV-D agencies would be realistically employed, whether it is the bonding or the insurance program? Would you comment?

Or I suppose the alternative is, does it require IRS interception? You see, because the two are related.

Mr. BROOKS. Well, I might suggest that those individuals, who are not employed, but are self-employed, but do have other means of income, would not stay in jail very long.

Ms. ROUKEMA. I did not think so.

Mr. BROOKS. The experience in Detroit, the experience in Chicago, and Boston, Philadelphia, major cities that I know of, where they do jail, they do not stay in jail more than 24 hours. They come up with the money.

I appreciate what you said about New Jersey in terms of the demonstration, but I think in selective cases where the individual does have assets and does have the ability to pay, and we are not talking about the low end of the spectrum in terms of those people who are employed, but we are talking about businessmen who are

self-employed, they will not stay in jail. They will come up with the money.

Ms. ROUKEMA. The bond?

Mr. BROOKS. The bond, the money. Or if you throw them in jail, then they will not stay in more than 24 hours.

Mr. BIAGGI. Threaten to put them in jail.

Mr. BROOKS. Exactly. What I am suggesting here is that would create a tremendous deterrent effect to those individuals who flaunt the law.

Ms. ROUKEMA. Well, I agree with that. My question however is beyond that.

Is it sufficient to have the threat of punitive action by HHS on the local authorities. Is that sufficient to produce the results that you are talking about, whether it is the bond or the payment or through the jails.

Mr. BROOKS. I have problems with that. We have lived through this sort of thing with the threat of a Federal penalty for 7 some-odd years against the States.

Ms. ROUKEMA. Yes.

Mr. BROOKS. However, we must rely, the local administrations and municipalities must rely upon the State and the determination of the State to carry forth the program in its entirety. And within the State you have various demographics involved.

In New York City, as an example, I indicated to you our caseload is 67 percent out-of-wedlock. The rest of the State it is under 40 percent. You have some tough judge in upstate New York or out in Suffolk County You do not have them in New York City. So that you have variables. And if you penalize the State, the State is going to turn around and penalize the local municipality, who has been trying hard to have a successful IV-D program, but has a difference in demographics, different court attitude, and I do not think that is an equitable way of treating it, because the State will only turn around and penalize those local communities.

In New York City, for example, we have increased collection from $15 million to $23 million last year, over a 4-year period of time. We have reduced our expenditures for payroll deduction order, quasi-judicial systems, tax interception.

Incidentally, it was New York City who introduced the tax intercept concept in Washington and New York State in 1977. Unfortunately, it took us all these years to get it activated.

So that it is not the lack of the city's efforts that is causing these problems. And if you penalize the State, they are going to turn around and look at New York City and say, well, you have not given us the collections that we think you should have, and it is strictly based upon a caseload concept. I have that difficulty in that area.

Ms. ROUKEMA. Let me make this point. One of the reasons I concluded that the Federal Government needed more muscle here was that it is not the question of New York or New Jersey fulfilling its responsibilities. They have been two of the States that have tried, made an honest, earnest effort to fulfill their responsibilities. But there are many States, more than 26 who have almost no semblance of IV-D agencies operating in their States. And they have chosen to disregard.

And it is those States that I think we are concerned about getting into a national network, a functional national network.

Mr. BROOKS. Well, I see your point. And I think it is probably necessary to get after those States. However, looking to our State, as an example, where you have the local counties doing everything it possibly can, I think perhaps one of the things you should look at is a 4- to 5-year plan in terms of where are you today, and what kind of an increase can we expect next year, and the year after that.

Nothing comes easy in this program, and nothing comes easy in the three layers of government that we deal with, Federal, State and local governments. So that if there was some sort of a 5-year plan, in terms of where you expected us to be in 5 years from now, understanding that it takes time to implement certain things, then I would say that that would be a logical approach to that problem.

Ms. ROUKEMA. Thank you.

Mr. BIAGGI. You did not mention that you concentrated on AFDC cases. Is that to the absolute neglect of the others?

Mr. BROOKS. No, it is not. We have a large staff of people in the courts who handle the non-AFDC cases.

Our problem really in the non-AFDC cases is the lack of enforcement tools. We do not have the same payroll deduction order requirement for the non-AFDC as we do for the AFDC. We do not have the State or Federal Government tax intercept program for non-AFDC as we do for AFDC.

So these tools are really lacking and one of the recommendations we would like to make is that these tools be expanded to include the non-AFDC caseload.

And, incidentally, referring to the administration's bill, and to Secretary Heckler's remarks at that hearing before the House Ways and Means Committee, the administration bill does speak of helping the nonagency family. I do not see one specific item in there that really addresses how they are going to help them.

When the Secretary was questioned about the Federal intercept, she indicated that that was best left to the States. Now, I disagree with that. And if I could quote some figures—New York City, our average collection from an IRS intercept for an ADC case was $543 a case. The average intercept for a State tax intercept, including State and city, was $210. So that you have a lot more to gain out of the Federal intercept than you do out of the State.

And New York State has a very high tax base, so that our $210 is very high and that also includes the city tax refund.

Mr. BIAGGI. Let me try something on you for size. Given the practical assessment of these affluential parents who choose to avoid payment by engaging lawyers, engaging in devious structures and have been successful even to the point where they say and can prove on paper that they have no genuine income.

You may recall that the Government wanted Al Capone many years ago. They developed a new theory that was sustained in Supreme Court, the "net worth" theory. As a result of it, he was convicted and he went to prison. It was the first time it was applied. How about the motion of applying a net worth theory in this case? Would it require law or would it require just a simple question of prosecutors or IRS pursuing it on net theory?

Mr. BROOKS. I really could not answer that. It sounds like a logical way to go.

Mr. BIAGGI. If we do it for a gangster, why can we not do it for people.

Mr. BROOKS. Because taxes today is Federal law where support is not really Federal law. In New York State it is a crime not to support your family. I do not know that it is a crime not to support your family on the Federal level. So I think you have that problem. And perhaps, and probably would require a change in the law.

I think we have touched on a very important point, and Congresswoman Roukema's bill is very interesting, because we are going to be treating the payment of support to children as we do taxes to the Government. And I think it is as important to support our children as it is to support the Government, so that I highly approve of that particular concept.

And do not let the respondent get into any arrears problems or get himself into a financial hole. Take the money out right up front. Because you know the statistics of how few people are paying their support orders. So that we do acknowledge the points in your legislation, your recommended legislation, Congressman.

One other issue I would like to touch on and very strongly, and that is the Federal Government's proposal to reduce the reimbursement rate.

We are very concerned about that. We have already suffered a 5-percent reduction in the Federal reimbursement. We have suffered a 3-percent reduction in the incentive this past year. And now they are further recommending a cut in the reimbursement rate to 60 percent.

That extrapolated to New York City's budget will mean over $5 million tax levy funds. And I do not know that we have it. So that we would have to cut in an area that you are most interested in expanding, and that is the nonwelfare area, because again we are only measured by the dollars collected for ADC reimbursement, and yet we provide all these other services.

One other thing that we are not measured by is the number of welfare cases we close because of our intervention. We did a study in New York City about 2 years ago, and we looked at welfare cases that were closed because we found the absent parent in the home, the child was not in the home, the custodial parent was working. And this was due to our investigations. And we measured that. Cases that stayed closed for over 3 months. And it came around $2.8 million. And that is conservative. We were very conservative in the cases that we tracked.

Another odd thing happens. On a monthly basis, after we serve a summons for a respondent to appear in court, 150 ADC cases are closed before the hearing date. We do not know why. We have no clue, but we are very suspicious. And that we did not include in our study.

So that we are a tremendous deterrent effect to reducing the AFDC expenditures. And I think that we should be given consideration for that. However, we are not measured by it.

Again, all we are measured for are the collections for ADC cases, so that we are really measuring apples and oranges.

Ms. ROUKEMA. I really appreciate your testimony, Mr. Brooks. May I just ask you one short question though about the formula again. I tend to agree with you concerning the deficiencies in the administration's formula. I do not know whether that is just as much as we can expect because their original formula was going to be even lower. We talked them into something higher in the negotiating posture, but how much is it going to mean on a percentage basis? How much would you be losing?

Mr. BROOKS. The State would be losing 10 percent of Federal reimbursement.

Ms. ROUKEMA. It was 70 percent.

Mr. BROOKS. It was 70. It is going down. The recommendation by the administration is now down to 60 percent. And extrapolated into city tax levy dollars, it would mean about $5.2 million of city tax levy funds that would have to go in to make up that difference. That is a lot of money.

Ms. ROUKEMA. With the chairman's permission, I would like to ask one more question, and it goes back to IRS intercept question and the bonding question.

In your opinion and experience, would bonding work as well as an IRS intercept? Because you have correctly identified that it is going to be very difficult to get an IRS intercept because of the question of Federal taxation versus the State issue, which is why in my bill I had to clearly delineate that this only triggers in after the State action takes place.

Mr. BROOKS. The bonding issue can also be triggered after a court of proper jurisdiction taking the action.

Ms. ROUKEMA. Would it adequately substitute for an IRS intercept? Because this is a discussion I have had with the chairman of the subcommittee, Mr. Ford. He is strongly in favor of an IRS intercept and I do not know whether or not that is practically feasible.

Mr. BROOKS. I think it is practically feasible.

Ms. ROUKEMA. No; I mean in terms of the politics in the Congress. Therefore, can the bonding system substitute for an IRS intercept?

Mr. BROOKS. It probably could, but it will not take care of the past debts that that individual owes. It will take care of any future payments.

Ms. ROUKEMA. Thank you.

Mr. BIAGGI. A proper bond could probably take care of future payments better than, in some cases, better than an intercept.

Mr. BROOKS. Oh, yes. The intercept will only take care of an arrearage or accrual.

Mr. BIAGGI. As far as the formula is concerned, that is a point of contention. Clearly the legislation that is under consideration goes into nonwelfare areas. We will be asking a network to go out and do more work with less money.

Mr. BROOKS. Exactly.

Mr. BIAGGI. In the end when you talk about enforcement, the rate of recovery is directly related to the amount of personnel you have out there doing it.

Mr. BROOKS. And we would be in bad straits if in fact there was restructuring. I think this is not the time to do it. I think there

will come a time when you want to take another look at it. But most States, most municipalities, are doing much better than they ever have been. And I think this is not the time to upset that cart, so that I am suggesting that, give us a few more years of that particular formula, until we build ourselves up to a point where we can financially support the entire mechanism that we would all like to see.

Mr. BIAGGI. You mentioned the amount of cases you closed. Do you have a report on how many cases you closed and how much money you saved?

Mr. BROOKS. Yes, we do, sir.

Mr. BIAGGI. I think that would be an important fact for this committee to have in its record.

Mr. BROOKS. We would be happy to supply you with that.

Mr. BIAGGI. I wish you would. I think it is very significant. Thank you very much, Mr. Brooks. It is nice to see you.

Mr. BROOKS. Thank you.

Mr. BIAGGI. Thomas DePippo, Regional Representative, the Office of Child Support, Department of Health and Human Services.

STATEMENT OF THOMAS DePIPPO

Mr. DEPIPPO. Mr. Chairman, those are my prepared remarks. Could I have them entered?

Mr. BIAGGI. Without objection, so ordered.

Mr. DEPIPPO. I wish to express my gratitude for the invitation to speak at this hearing, to have the opportunity to present the administration's views on matters relating to the enforcement of child support obligations.

I am the regional representative for the Region II Federal Office of Child Support Enforcement located here in New York City. As such, I am responsible for insuring that the States of New York and New Jersey, the Commonwealth of Puerto Rico, and territory of the Virgin Islands are delivery child support enforcement services to the citizens of those jurisdictions in accordance with title IV-D of the Social Security Act.

As you are no doubt aware, title IV-D, was originally enacted as part of Public Law 93-647 in January 1975 with an effective date of July 1, 1975.

The intent of the statute was to allow the Federal Government a more distinct role in the child support arena, an area which had been traditionally left to the discretion of the States. Pre-1975, limited effectiveness in this area had been achieved by the States. The Federal Government, sensitized to the overwhelming facts that the needs of children were being ignored by parents absent from the home and that public assistance was no longer the exception but rather the rule in the support of children, sought fit to exercise its authority out of concern for our Nation's children.

The legislation provided that the Federal Government would participate financially in State operating costs and that State operations would conform to the law under the threat of sanctions against a State's federally funded public assistance program.

The basic requirements of the statute, still in effect after 8 years of the program's existence, are that the following child support enforcement services will be provided by states and/or local jurisdictions automatically to public assistance families in need of the services and the nonpublic-assistance families who apply for the services.

Now, the requirements were, and still are:

The collection of child support from those legally obligated to pay; the location of absent parents whose whereabouts are unknown; the establishment of paternity for children born out of wedlock; the establishment of obligations via court orders or other appropriate mechanisms; and the enforcement of child support obligations when there is a failure to pay.

The success of the program over the years has been gratifying. A total of $8.8 billion has been collected, $3.8 billion on behalf of children on public assistance and $5 billion for children not on public assistance. Total administrative costs to this point amount to $2.7 billion which results in a collection to a cost ratio of 3.2, 3.3. Paternities have been established in 822,000 cases, 3.7 million absent parents have been located, and 2.2 million child support obligations have been established.

As I noted, for several years now the Federal Government and the States have worked in partnerships; to recover child support from absent parents. While the results are noteworthy, there is room for improvement. From operational experience, there is every indication that the potential exists for significantly increasing collections and for operating more efficiently and effectively. In an era of fiscal stringency, the opportunity is at hand to raise revenues and thereby reduce Government spending through a more vigorous child support enforcement program.

In his state of the Union message this past January, the President expressed an intent to strengthen the enforcement of child support laws to insure that single parents, the majority of whom are women, do not suffer unfair financial hardship. Major changes in the American family structure in recent years have combined to produce a growing number of single-parent families dependent on some form of governmental assistance. One means of addressing this social problem, to the benefit of the children, the family, the taxpayer, the Government, is to continue to place responsibility for financial support squarely where it belongs: on the parents, and especially the absent parent who is failing to meet both the moral and financial responsibilities of paying child support.

In an effort to direct States to focus on the effectiveness of the child support enforcement program in order to make it even better than it is today, the administration has proposed for the Congress consideration a series of amendments to title IV-D. A revision to the current method of financing the State's programs is one of the most significant provisions because it would establish a clear relationship between financing and performance by providing tangible recognition to States for exemplary program performance.

This provision would authorize the Secretary of Health and Human Services to make payments to a State whose program is found to be exemplary in the amount of collections made and the cost effectiveness with which the program is operated. These fac-

tors could be measured against a State's prior performance, nationwide program performance or other factors with recognition being given to performance as it relates to both the public assistance and nonpublic-assistance aspects of the program.

Grants would also be provided to States, requiring their financial participation as well, to develop and improve child support clearinghouses and other information management systems to aid in the enforcement of support by facilitating the collection and exchange of information, including the tracking of support obligations and payments.

It is the administration's intention to fund these payments via a combination of the effects of reducing the current Federal matching rate for State operating costs, repealing the current provision which awards incentive payments to States for merely making a collection on an obligation and by requiring States to charge certain fees in regard to their nonpublic-assistance caseload.

With respect to the latter element, States would be required to charge an application fee to nonpublic-assistance families requesting services or the State can pay the fee itself, and permitted to impose fees against obligated parents, fees which would be mandatory in the case of parents owing past-due support. I might add that these fees are not intended in any way to reduce the amount of child support that is paid.

Another proposal being made by the administration would extend to all States the use of certain practices which have been utilized by some States and have been successful in improving the effectiveness of their child support enforcement program. These practices include the following:

Wage withholding. States would be required to have in effect procedures under which wages are withheld to collect support. The State could use this as a routine collection device, but, at the latest, must begin withholding, without further enforcement action, once the parent had failed to make payments under a support order and the delinquency equaled the support payable for 2 months or longer.

Prior to notifying the employer, the State would have to take steps prescribed by the Secretary in regulations to protect the procedural rights of the parent. The parent would have to be given notice of the default and of procedures he must follow if he wishes to contest the action. Thereafter, notice would be given to the employer, and the employer would be required to withhold the amount stated in the notice and pay it to an authorized person for appropriate distribution. The notice to the employer would also specify the amount he may, unless he waives payment, retain as a fee for the cost of effectuating the withholding. If an arrearage were involved, the fee must be added on to the support withheld; in other words, the debtor-parent bears the cost. In other cases, the State may decide whether the fee, if any, should be additional to or subtracted from the support withheld.

However, in all cases, the amount of the fee must accord with criteria prescribed by the Secretary. An employer who fails to comply with a notice to withhold from wages would become liable for the amount that he failed to withhold from wages, up to the amount of the arrearage. Provision would also have to be made for

terminating the withholding, and for imposing a fine on an employer who discharges a parent because of the support withholding.

Also, the State agency would have to notify the corresponding agency of any other State in which an individual was working if he owed support under an order of the first State. The procedures adopted by the second State pursuant to this requirement would then have to be used to enforce support obligations established by another jurisdiction when notice is given that the parent is working in the S ate.

This withholding would have priority over all other claims against the wages, and the restrictions on the amount that could be deducted would be limited by the Consumer Credit Protection Act.

Quasi-judicial or administrative procedures is the second practice. Procedures using other than the traditional judicial forums would have to be developed to establish and enforce support obligations. The procedures could include notice and opportunity for an administrative hearing or the use of court officials other than judges to perform various support related functions, in order to develop more expeditious and less expensive remedies. These alternative procedures would comport with all due process requirements and would provide for notice of actions to be taken and the opportunity to be heard, and for appeal of the determinations made through the new processes. Generally applicable judicial remedies would only be available upon request of a party, and only to review the previous regulation. Provision would also be made for enforcing the support orders of another State, regardless of the mechanism used for entering them.

Withholding for past-due child support from State income tax refunds. Procedures would be put into effect in the State to require, upon proper notice to the State tax authorities from the State child support enforcement agency in order to enforce a support order entered in any State, withholding of past-due support payments from amounts that would otherwise be paid, as a refund of taxes, to the absent parent who is delinquent in meeting his support obligations. The State may apply this provision to AFDC cases only, or to all children for whom collection services are provided under the State's plan for child support enforcement. Of course, the State could make this procedure available with respect to all children, but the costs for non-IV-D cases would not be costs of carrying out the State plan.

The Secretary of Health and Human Services must issue regulations prescribing the necessary details for each of these three areas. The use of regulations to specify the particulars of these enforcement techniques is more effective than spelling out every element in the law, since requirements can be developed in the alternative, can be performance based, where appropriate, and can be more readily adjusted if it should appear necessary based on unusual circumstances in individual States. Further, if the State produces detailed factual data to support its contention that a particular procedure required under this section would not improve the efficiency or effectiveness of its program, the Secretary could grant a limited exemption, subject to later review, from the requirement.

A third significant proposal is one which would replace both the annual review or audit of States child support enforcement pro-

grams with a review to be conducted not less frequently than triennially and the current 5 percent penalty against a State's Federal public assistance funding for failing to operate an effective child support enforcement program with a graduated penalty, beginning at 2 percent and increasing to 3 and then to 5 percent if corrective actions are not taken within a prescribed period of time.

The remainder of the administration's proposed revisions to title IV-D would serve to improve the program by increasing the availability of Federal locate resoures, providing authority for States to engage in experimental and demonstration projects aimed at increasing program effectiveness and by affording children in foster care child support enforcement services in the same automatic fashion as those children receiving the standard form of public assistance or AFDC.

In closing, I wish to reiterate the administration's commitment to the improved and effective delivery of child support enforcement services as governed by title IV-D of the Social Security Act.

As a regional representative for the Federal office administering title IV-D, I am particularly close to State operations and therefore well aware of the environmental constraints hampering effective State program operations as well as the only limited support State administrators sometimes receive from the three branches of State government.

While the former may sometimes be uncontrollable in nature, the latter is within the purview and at the discretion of those individuals empowered by State law or by the electorate. I would urge these individuals, if they have not done so already, to fully support the efforts of the Federal Office of Child Support Enforcement and to work hand in hand to bring about program improvement where necessary and achieve true program effectiveness. Our children deserve nothing less.

This concludes my prepared remarks and if I am able, I would be pleased to answer questions you may have.

Mr. BIAGGI. Thank you, Mr. DePippo. We acknowledge that the administration has been in the forefront and we are happy about that. As I stated before, it comes as no surprise considering the background of the President in his conduct as Governor.

What I am concerned about really is whether or not in this legislation, as we see it develop—I think it will change considerably before it gets to the President's desk, and I know it will get to the President's desk—was whether or not we take advantage of this opportunity in time of dealing with the matter in the most comprehensive fashion.

My own legislative experience of some 15 years tells me that the time to strike is when the iron is hot. And it is white hot at this point. If we were to fail to include all of the facets and piecemeal it, we would be missing a very significant opportunity. I know that there is a very definite shift in going into the non-AFDC. But I am concerned about the enforcement.

In the end I see it as a matter of judicial conduct and I do not know that we can expect the judges of our Nation to really change their attitudes. Their existing attitude is one of laissez faire, very mild, and rarely do they come in with the kind of firmness that the situation, I believe, requires.

And in the absence, or considering that attitude, we should try everything in our power to have it incorporated in this legislation, as much of the enforcement mechanism that we can humanly contrive.

With relation to regulations, if you make a case for it, and if we have the support of the administration, then regulations might be the way to go, but considering that Congress does not have the legislative veto, as I stated at the outset, it becomes almost necessary for us to be lawyer-like draftsmen in calling for legislation.

Heretofore, we relegated a good deal of authority to the agencies through the regulation process because Congress in many cases had legislative veto. The Supreme Court vitiated that.

My concern with regulations is where are we coming from? Really how hard do we want to get? And will it accomplish our purpose?

I think a case can be made for it and this comes within the negotiating process.

Let me ask you one question, or two. One specifically.

Child abuse, it is my contention that child abuse develops in many forms. It is my contention also that given the increased tension because, first of the trauma of divorce, and, two, because of very substantial diminution in income, that reduction in income plays havoc with a woman in an effort to sustain herself. And over a sustained period, her nervous condition becomes apparent. And it reflects itself ofttimes on abusing children. Most of the abusers, we know, are women, because they are always in contact with the children.

It is my contention that the definition of child abuse as it now exists should be expanded to include nonpayment of support.

Would you care to give me your opinion on that contention?

Mr. DEPIPPO. Expand the definition to the nonpayment of support?

Mr. BIAGGI. No, we have statutory definition of child abuse. I would like to expand that definition to include nonpayment of child support as child abuse.

Mr. DEPIPPO. OK. I have you.

Mr. BIAGGI. The reason, a couple of reasons, the most significant of which is that many States regard child abuse and neglect as a crime. I do not have to tell you how a nonpaying father would respond to a criminal charge. A little different than his present civil situation. Not only does it put teeth into the law, it puts one helluva shark bite into it. And those fathers will find it difficult avoiding it, no matter how sophisticated and effective their attorneys were under the present condition.

Mr. DEPIPPO. I do not know how distinct a definition or how distinct a difference there is in the definitions between neglect and abuse. Certainly, the nonpayment of support, as far as my limited knowledge of the area is, I think can certainly be construed as child neglect. I do not know whether the definitions of abuse are broad enough or if the punishment attached to it warrants the inclusion of nonpayment of support as qualifying as child abuse.

I am assuming, although I am sure there are degrees of neglect as well, which have a strong penalty attached to it, but I am not

sure that you could properly classify the nonpayment of support as abuse in the terms I am imagining abuse to be defined.

Mr. BIAGGI. Except that the law states child abuse and neglect.

Mr. DEPIPPO. It does not signify the difference between the two at all.

Mr. BIAGGI. I suckered you into that one. Let me qualify it for you.

The administration takes the position of reducing the appropriation from 70 percent to 60 percent. Given the expanded coverage, expanded area of attention, which I support wholeheartedly, how can we justifiably ask people to do more with less, when originally you needed more? The effectiveness of these programs is determined by the amount of people you have going out and working really. That is where you are.

Mr. DEPIPPO. The original reimbursement rate under the original law enacted back in 1975 was 75 percent. It was reduced last year to 70. The figures that have been made available to me were indicating that there was not really very much of a drop in the level of activity in the States based on that drop from 75 to 70. Now, I realize the drop now is more significant than that. However, the administration's bill proposes to take the money that it purportedly would save as a result of dropping it from 70 to 60 to feed back to the States based, an incentive payment, based on performing better.

So what the administration is saying is we are not dropping our commitment or our level of funding. What we are trying to do is to encourage States to do better. If you did better, the reimbursement comes back to you. That is really the intent. And hopefully, since prior to this, the reimbursement, the money just goes out regardless of what level of effort the State makes, no matter what their collection rates might be, no matter how much money they spend. It is totally open ended. Seventy percent of whatever you spend qualifies for Federal matching.

We really feel that even though we are talking about dropping it to 60, now that 60 percent is still open ended. There is no limit to it.

Mr. BIAGGI. What do you mean by that?

Mr. DEPIPPO. Whatever the State spends as an administrative cost, they get reimbursed for it at 60 percent, what our proposal is.

There is no prohibition. There is no limitation, other than it being eligible under the law. And we are taking the drop or the savings, if you will that the Federal Government is not putting out, that 10 percent different, and funneling it back to the States in order to encourage better performance. So we really do not feel like we are dropping. We are trying to encourage States to do better.

Mr. BIAGGI. I know you are, but you know you have to consider the State's position. I have no quarrel with the purpose. I quarrel with the results. That is the difference. I understand. Again, looking at it realistically, States are cutting down their budgets, their income, the amount of Federal resource they received in the past is diminishing, and they are kind of caught short.

And my own observation would be that the States because of their paucity of dollars, would not be forthcoming, would not be able to be forthcoming, to even take advantage of the 60 percent.

Mr. DEPIPPO. I guess Congress is also looking for, and I am not sure how realistic this is, we are looking for belt tightening, I suppose, at the State level, too, so that if necessary they will rid themselves of extraneous custs. They will try to be as cost effective as possible, et cetera. That is really the intent.

We are talking about fiscal stringencies, as you well know, down the line. Not only at the State level, but certainly at the Federal level, as well.

Mr. BIAGGI. I am aware of that.

You were here when Commissioner Brooks spoke about the amount of cases that they close on welfare, taking people off welfare. That is not factored in. And it should be.

Mr. DEPIPPO. The whole area of cost avoidance, and I would agree with you 100 percent, there is a strong factor there that has not been factored in over the years.

One of the efforts the Office of Child Support Enforcement is undertaking at the moment, a study is being performed which in my opinion is well funded now, to really take a look at the whole area of cost avoidance. In other words, how much money are you really saving when you take a family off public assistance in terms of medicaid dollars and food stamp dollars and things like that. And a formula for determining how much States really do save. And hopefully to reward them in terms of recognition awards because of that cost avoidance factor.

It is just that it is a very nebulous area. Very difficult to really determine the amount saved. And this study is just beginning, as a matter of fact.

Mr. BIAGGI. Thank you. Ms. Roukema.

Ms. ROUKEMA. I would like to pursue that question of bonuses a little further because I know the intention of the program and I have heard and discussed it with Mrs. Heckler before the fact, and have heard the testimony as well.

Your testimony here today, you do not call them bonuses, but you outline a system where you are tracking the effectiveness of States programs and supposedly rewarding them on the basis of their experience.

Now, having heard what Mr. Brooks has said, is it possible that your legislation could incorporate the factoring in through bonuses of the successes of say his agency?

Mr. DEPIPPO. The successes of his agency in terms of closing case?

Ms. ROUKEMA. Yes.

Mr. DEPIPPO. Yes. I think that is under serious consideration right now, and I think hopefully that we will factor in a cost avoidance feature.

Ms. ROUKEMA. Mr. Brooks, do you want to make a statement on that subject?

Mr. BROOKS. Yes, I would like to.

Ms. ROUKEMA. Please do.

Mr. BROOKS. We just had a visitor from the Office of Management and Budget to our operation last week. And one of the ques-

tions we raised was this issue of being given credit for the establishment of paternity without getting any support orders out of it. That is clearly one of the mandates of section IV-D. How about the case closing? And there is no formula at present. The thought is there, but there is no formula that has been prescribed. And my suggestion is why cut the reimbursement at this point, until such time as you have such a formula that will give the local areas credit for establishing paternity, closing IV-D cases and doing all the things, and taking care of the non-AFDC cases.

When that is in place, and I indicated to you that at some future date there might be a time when the reimbursement rate should be changed. Thank you.

Mr. DEPIPPO. My assumption is, although it may be incorrect, my assumption is at this moment, since, as I stated in my remarks, the law was not going to be very specific in terms of a lot of things, and that most of this would be done by regulation, which you, Congressman, have alluded to also, that in fact no concrete decision has yet been made on the nature of these performance awards. I am not sure what the OMB people involvement is at this moment, but I know within the department a decision has not yet been made, and a lot of things are being considered, and a lot of performance, different configurations are being considered at this moment.

Ms. ROUKEMA. I will repeat my statement earlier that I do think, however, that we would like it to go beyond the 60 percent formula, if at all possible. I think it is safe to say that there is considerable sentiment in Congress, and I do not know whether or not within the budget restrictions, whether or not we will be able to do that, but certainly that is our aim.

Let me just observe that I think what the administration has come up with is a good bill in some respects. It indicates progress. And I have personally expressed my appreciation to the President and to Mrs. Heckler for the steps that have been taken. And to show good faith, I joined as cosponsor while registering my firm conviction that—and by the way, I find it inexplicable that they did not choose to go a step further in terms of mandating the kinds of things that my bill mandates. And I will tell you why I find it inexplicable.

As a Republican, and as an administration that wants to streamline bureacracies, and have less overhead and administrative costs, I do not understand why the administration did not see the merit, of an immediate and mandatory requirement, rather than the kind of discretion that I believe the administration bill still leaves to the States in terms of compliance. The subject of the bonuses and the factoring in, you have described is a rather elaborate system of not only incentives, but information, tracking, and clearinghouses, and in my feeling that is exactly what we ought to be getting away from. As soon as you do not permit delinquency, you eliminate three-quarters of the clearinghouse questions, the tracking questions, the facilitating of collection and exchange of information, it sounds to me as though the administration almost went out of its way to make it unnecessarily complicated, when they could have gotten to the heart of the matter by not permitting delinquency.

Now, I understand their, I do not agree with, but I understand their hesitancy on the going heavyhanded and mandating to the States, because there are certain people, of both Republican and Democratic persuasion, that want to tread gingerly on States' rights, but I had hoped that the administration would step boldly there and say, "Look, this is a national enforcement problem. We have to take a national approach."

But this clearinghouse and tracking system, I do not understand it. I do not understand why it comes out of a Republican administration because it is unnecessarily cumbersome in my opinion.

Mr. BIAGGI. Well, we will correct that situation.

Ms. ROUKEMA. I am not diminishing the efforts of Mrs. Heckler. I think she has taken the administration a quantum jump forward, not only in substance, but also in the fact that the interest has been focused on this issue. And had it not been for her efforts, I doubt that we would be seeing anything come out of the subcommittee.

Mr. BIAGGI. I would like to add my own sentiments in that regard. There is no question that she is the spearhead in this situation. And she has made it very clear that she wants it and she knows the problem. She is probably more sensitive to it than most for a host of reasons. And that is why I am as confident as I am that we have legislation.

Mr. DEPIPPO. If I could defend, for a moment the clearinghouse feature of the administration bill.

Ms. ROUKEMA. Please.

Mr. DEPIPPO. There is a very serious problem in many States in terms of getting information regarding child support. And in fact we are often asked by the Congress for information which States just do not have available.

The idea of a clearinghouse was to facilitate gathering information. That was one aspect of it, but not really the most important. The real important aspect of it was to insure that States were properly tracking and entering support orders. Quite often there were arrearages existing that States did not know about, because cases would fall through the cracks, cases would not get onto any kind of a automated system, if you will. And nowadays in any State, an automated system is almost a necessity.

The intent there was to really try and get these States on top of all of their caseloads. My own experience, not necessarily with the States in region II, but in other States, we would ask them information. They did not know what their caseload was. They did not know how much money was due to them.

I mean, any business entity knows what its accounts receivable are. These States or jurisdictions knew nothing. They had no idea how much money has been owed to them.

Now, this is certainly not doing much for the family out there who is looking to get a child support collection, simply because of some mechanical failure to keep track of the case. That was basically the intent here.

It was also intended to facilitate interstate information, so that when you have an absent parent living in another State, you can get that information recorded and track that case as well. And that was really the intent.

Ms. ROUKEMA. Thank you.

Mr. BIAGGI. Thank you, Mr. DePippo.

The next witness is Hon. Edith Miller, the administrative judge, New York City Family Court.

## STATEMENT OF HON. EDITH MILLER

Judge MILLER. Good morning. I would like to begin on a personal note, by congratulating Congressman Biaggi on being named grandfather of the year. I saw the picture of you with your six beautiful grandchildren, and although you have me outnumbered, six to one, I am working on it.

Mr. BIAGGI. Thank you.

Judge MILLER. Thank you for inviting me to testify concerning the need for enforcement of child support obligations. This very important issue cannot fully be explored in 10 minutes, but I welcome the opportunity to make some brief comments and observations.

We Americans are very fond of public opinion polls. And if the question was posed at random, "Should children receive consistent financial support from their parents?" the answers given by the public at large would overwhelmingly be affirmative. Yet the grim statistics reveal that there are parents who fail to support their children, are able to rationalize this failure and can do this without fear of any meaningful disapproval or repercussions. These parents are ordinarily law-abiding people, but they take advantage of our basic freedoms such as the right to privacy and the right to job and geographic mobility to avoid the responsibility of supporting their children. And the time has come for the Congress and the respective State legislatures to address this problem while preserving due process of law.

The family court in New York City handles more than 100,000 petitions annually and more than 50 percent of these petitions relate to applications for support and for enforcement or modification of existing support orders. Although complex mechanisms have been established to facilitate collections in AFDC cases, the custodial parent who is not a recipient of public assistance often has to endure financial crisis when support payments are received late or not at all. I am here today because I believe that these parents and children deserve legislative and judicial assistance, for when support is not forthcoming, not only does the child suffer, but society ultimately must bear the burden.

Now, we are not talking about the relatively small number of cases where the petition seeks financial contributions for private schools, European vacations and ski equipment. We are talking about bread and shoes and about affording rent or mortgage payments in a safe and clean community.

Unfortunately, this is not a problem unique to New York City, but is of national scope. According to a recent article in the New York Times, the Census Bureau reported that nationally, just 46.7 percent of 4 million American women who were supposed to receive child support payments are collecting the full amount. The number of delinquents was put at 2.13 million, 380,000 more than when a similar survey was conducted in 1978. And these statistics

do not include the women who have never applied for support because they deemed the court process to be an exercise in futility.

Although miracles are expected from the courts in this country, courts are not social agencies empowered by the legislature to dispense funds to needy children, not even family courts or domestic relations courts. A court is an adverserial forum bound by statute and established rules of evidence. Within that context, the role of the court is to make a determination of support based upon the needs of the child and the ability of each parent to pay.

Even in those cases where the respondent does not appear, once the court has jurisdiction over the respondent, an inquest may be held. However, in most cases the custodial parent is a woman who does not have enough financial information about the father either because they were never married or if they were married she knew little about family finances. Even though she may have signed joint tax returns over the years, she does not have copies of them and does not know or remember what income was reported. Just to get a copy of a tax return takes a minimum of 8 to 10 weeks. But, assuming that the court is able to proceed, even after an order is made, the implementation and enforcement of said order is dependent upon many factors.

We in the judicial system are especially attuned to the frustrations suffered by custodial parents who appear in court time after time and ultimately receive little satisfaction in terms of actual dollars coming to them for the support of their children.

We are hopeful, therefore, that legislation, such as bill H.R. 3546 will have a significant impact in ameliorating the problem by making available to non-AFDC families many of the provisions presently used to assist AFDC families in obtaining support. Increased availability of the Federal parent locator service and use of Federal and State income tax refunds for support arrears would help. However, based on the experiences of family court, these procedures do not go far enough.

All too often the custodial parent must work full time to support the child and does not have the time nor money to pursue rigorous enforcement of a court order. More often than not, the custodial parent is a woman appearing per se because she cannot afford counsel fees. The collection of arrears can be a complicated process and if meaningful results are to be obtained, the services of an attorney are almost a necessity.

Perhaps the effective utilization of court appointed attorneys to represent custodial parents who cannot afford counsel and do not receive public assistance would be a viable solution in collecting judgments and arrears.

The attorneys would receive a fixed hourly rate paid by the locality and the cost of their services would be assessed against the respondent parent. It would be helpful if a public accountant were available, especially in those cases in which a self-employed respondent suddenly acquires instant poverty.

Consistent with due process of law, methods of collecting child support payments should be as simple as possible. For example, at the present time a payroll deduction order is effective only on an employer doing business within the issuing State. However, if the same order could be served on an employer in another State, collec-

tions would be facilitated. Perhaps an interstate compact could accomplish this. In addition, more child support payments might be made if the failure to do so were reflected on a person's credit rating, just as the failure to pay other debts is recorded.

It is important to note that gaining jurisdiction over a respondent by service of a summons is often difficult to do. If other methods of service have failed and the place of employment can be located perhaps we should explore the feasibility of substituted service by serving the employer and in turn having the employer attach the summons to the respondent's paycheck. This is for the respondents who work irregular hours, at different site locations, or any other special circumstances.

And I might add, it will also help the AFDC collections also because one of their problems is just this, getting jurisdiction over the respondent.

Current studies indicate that more than 50 percent of the children in families headed by a female live in poverty compared with only 8 percent of husband-wife families. This is why the work of this committee is so important. Children have no political power. They depend upon concerned adults to insure their rights to good health, education and the basic necessities of life. When lawful orders of support are ignored, economic stress often follows and may well be a contributing factor toward juvenile delinquency, status offenses and even child neglect and abuse.

We must do everything in our power to solve this problem for all children on a national level. Thank you very much.

Mr. BIAGGI. Thank you very much. You gave the committee a few suggestions that had not come to our attention before in finding a way to get at the scoundrels. And I want you to know I euphemistically call them scoundrels.

Judge MILLER. You know, sometimes they are bitter about the fact that they are having difficulty with visitation, but if they would come to court, we could resolve the problem of visitations, and at the same time the children would not be punished, because the children need to eat whether they are being denied visitation or not.

And we are perfectly willing to help them solve the problem of visitations.

Mr. BIAGGI. I do not think that should be a consideration. If the court can reconcile that, fine.

Let me ask you, now that you raised that point, what percentage of the cases concerning visitation produce the nonpayment? Have you any idea? Roughly.

Judge MILLER. I find you can never realistically figure that out, because what usually happens is that after 4 years when you find them, he then comes to court and that is his defense for the 4 years, he did not get visitations. I only consider it a realistic defense when she stops letting him see the child and he comes immediately to court and asks for an order of visitation and says to me, "I put the money in the bank account, Judge, to pay to the court, as soon as we get the visitation straightened out." Then I believe the story.

Mr. BIAGGI. Well, clearly he is in good faith.

Judge MILLER. Yes. And there are many men like that. And I also want to add to people, which they do not realize, is that there are an awful lot of fathers who pay child support voluntarily and who never have to come to court. And they do not get any credit at all. They get sort of lumped in with the others. But the fact that no court order exists, does not necessarily mean that the man is not paying. It may very well mean that he is paying voluntarily, and the woman does not have a problem, does not need the services of the court.

Ms. ROUKEMA. Judge Miller, I am very gratified to hear your statements today because I think you have put abstractions into real-life terms, that is the real problems that women and children face.

I am particularly pleased to understand your perception of the visitation problem. As you may know, you were not here earlier, but I have introduced a bill into Congress on this subject, which by the way is describing your page 5. Those are the key elements that you have outlined of my bill. They are the key elements.

Judge MILLER. I did not know that.

Ms. ROUKEMA. But that is not the only contribution you have made. You have made other contributions in your testimony.

But the emphasis that you have put on due process and on the question of visitation rights is important for this committee to hear. When I first started, with my proposals, and at the very inception of this and when the administration was beginning its work on their own bill, a lot of the arguments that were raised were the question of due process, visitation questions, infringement on State divorce laws and all the tangential issues.

I think your testimony validates our conclusion which was that we can truly have a national enforcement system without infringing on the rights of the States or the question of visitation, and any system of mandatory wage withholding will not prejudice future court actions or even divorce law reform in the individual States.

Judge MILLER. Due process of law requires notice and an opportunity to be heard. And our old ways of providing for service, assume they were still living in small communities in which nobody ever leaves, everybody knows where everybody could be found, and does not take into account a system where a man may be living with his girlfriend and the rent receipts were in her name, the telephone bills is in her name, the utility bills are in her name, and how do you find him? You know he is there, and yet technically he is not there.

It also does not take into account certain jobs, like construction workers who move from site to site or longshoremen, and merchant marines who have different shifts. And there are lots of job situations which did not exist hundreds of years ago when we started talking about due process.

And if we could just remember that the purpose of due process is to treat everybody fairly, and as long as the respondent gets notice and has an opportunity to tell his or her side of the story, that we have complied with due process of law and we do not have to lock ourselves into thinking only in terms of the way things used to be, when people did not move around so much.

Ms. ROUKEMA. I would like to ask just one question of clarification. On page 5 you have proposed a method:

If other methods of service have failed and place of employment can be located, perhaps we can explore the feasibility of substituted service or by serving the employer, and in turn having the employer attach . . .

Are you suggesting that a penalty be engaged upon the employer?

Judge MILLER. I had not thought in terms of a penalty, as such. You see the point is this, is that indirectly if the employer is served, and he does not do so, and he is called into court to ask about it, I think he does not want to take time off from his business to come in and talk about why he did not make the service.

I do not think that we always ought to think in terms of penalties. The minute you think in terms of penalties, people figure out ways to get out of the penalties.

But I think if employers are made to understand, just like the general public, they keep treating this as something different, a different kind of debt. And that is where we get into difficulties.

Nobody at all feels at all strange if Macy's repossesses somebody's car because they did not pay an installment contract, or if the bank repossessed the car for that. But there would be a lot of opposition from people if a car was repossessed because somebody had not provided for children. And it is to the extent that we have not treated this. I am for due process of law. I think the minute we start treating this, not as a social problem, but as a debtor-creditor situation. A legal obligation. Get away from sociology. Get away from the fact * * * because people can say, "Well, she treated me terribly, so therefore I am not going to give her a dime." It is not to her. It is for the children. And that is where we need to get it down.

I just want to point out, the reason why I care so much about this is because I cannot tell you how many times we have delinquency cases before us. And everybody thinks that children are out mugging old people because those are the cases that hit the newspaper. But a large number of our cases are children taking bikes from other children, taking skateboards from other children, taking their bus passes, and taking their lunch money. But because they do it by force, it becomes a felony case, and comes to robbery.

But these children are feeling the pressures and they are acting out, and I am not in any excusing their behavior. I mean I grew up poor and I did not do these things. I just did without them. But I am merely pointing out that if we could take some of the economic stress away from these children, perhaps we would have less crime in our communities. We pay for all of these things one way or another.

Mr. BIAGGI. I appreciated your last statement, your last sentence when you closed in your testimony. You made reference to child abuse.

Judge MILLER. Yes. That is the stress upon the mother who is out trying to do three jobs at once and loses her temper because there is just too much pressure on her.

Mr. BIAGGI. That is one of the principal purposes of the hearing, which I stated before, but you were not here. We would like to look

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into the possibility of enlarging the definition of child abuse and neglect to include nonpayment of child support.

Judge MILLER. That would be interesting.

Mr. BIAGGI. Then it is criminal.

Judge MILLER. It is already on the books as a crime right now, but we do not have it in the civil court in the neglect in any kind of specific way. We just say failure to provide, but we do not specifically spell it out as nonsupport.

Mr. BIAGGI. New York is relatively progressive, but there are many States that have not given this issue any attention at all.

Judge MILLER. And that is why I think it should be handled as a national problem, rather than as a local problem.

Mr. BIAGGI. Thank you very much.

Will the following witnesses come forward, and we ask them to confine their experiences to no more than 2 minutes. I know you can talk ad infinitum, but we just want to get the substance of your experience on the record. Yvette Allen from the Bronx. Barbara Tutt from the Bronx. Rita Donovan from the Bronx. Estella Salovney, Staten Island. Joan Kaplow, New York. Amy Fox, New York. Mary Fudens, from Huntington.

## STATEMENT OF YVETTE ALLEN

Ms. ALLEN. In October 1982, I brought to the Bronx courts a court order which I received in Albany, N.Y. in January 1980. They proceeded to try to enforce this court order. In November they received a court order stating that the father should pay $25 a week and should pay $5 for the arrears.

Since then I have filed parent locators, one in January and one in May of this year. I have sent in complaints from Albany County on five occasions. I have also sent a complaint to the Interstate legal unit. In July of this year, I started receiving checks for support. I only received two in July of $15 each. And also I received one in August for $15 and one at the end of August for $30. That is all I have received since this complaint has been filed.

The arrears are now over $3,000 and I have had a court order since January 1980.

Mr. BIAGGI. I understand your problem. You lived in Albany. You received a decree in Albany. Then you moved to New York City.

Ms. ALLEN. Yes, I did.

Mr. BIAGGI. Where is he?

Ms. ALLEN. The person is in Albany County. Yes, he is. They do have addresses in the file. We have asked on numerous occasions and since the beginning of this case in the Bronx, that there be wage garnishing. We have not received that. We have requested it, like I said, on six occasions. That is just the complaints. That does not include the original petition that was filed in Bronx County court.

Mr. BIAGGI. I will tell you what we will do, Ms. Allen. You are highlighting a situation that is commonplace. What we will do is make some inquiries for you.

Ms. ALLEN. OK, thank you.

Mr. BIAGGI. Barbara Tutt.

STATEMENT OF BARBARA TUTT

Ms. TUTT. I first complained in 1969 for child support. At that time he was working for the New York Police Department, which I got a hassle from the court, he was an officer of the court. When I finally was able to get him through some process of the court law, he stayed on the force here in New York for about 3 years and moved to Dade County in Florida, and owing me approximately $4,200.

After that, going to Dade County, I have been trying for the last 2 years to get something from the courts why they decreased the checks that they were sending me, which it took me a year to get them to pay me anything.

Sir, I am very tired. I worked all night long. I have not had any sleep.

I was trying to find out why in 2 years he never paid me anything. And when they did get the process going, it was supposed to be $50 bi-weekly and I was sent $49.10. Since then they have decreased the check to $29.10. And the last 2½ years I have been trying to find out why the check was decreased, for what reason, to find out anything or any information from the courts in Florida. I have not been able in 2 years to get anything from anyone in any court. Well, New York they said we sent letters. Dade County has not responded to one letter at all.

Mr. BIAGGI. Another one of the problems. We will make an inquiry for you.

Yvette, are you on public assistance?

Ms. ALLEN. No, I am not. I have never been on public assistance. I have the same problem that she has. My checks are only for $15. I have asked why is it $15. Since November I have heard nothing from Albany County Court.

Mr. BIAGGI. Rita Donovan.

STATEMENT OF RITA DONOVAN

Ms. DONOVAN. My case started from 1973, but most recently what I would like to talk about is from 1980 my husband went to Florida. And I got a new docket number. And my financial adviser wrote letters to Florida concerning my support. He did not want to put any money, but they exactly knew where he was, right. So he refused to put money. So I guess they got in contact with him over there and they put him in jail for that moment. And I guess he came up with $75.

Mr. BIAGGI. They do every time.

Ms. DONOVAN. And that is all I received from 1980 to now. So now the judge awarded me the arrest, so now he owes me over $8,000.

Mr. BIAGGI. Is he working?

Ms. DONOVAN. Well, now he is in St. Thomas, because I spoke to my financial adviser, Mr. Vargas, and he will continue sending letters to the court and get behind him. So this time when he was going to arrest him again, he went to St. Thomas. So I have received no money.

Mr. BIAGGI. Ms. Roukema's bill would be very helpful in these cases, dealing with interstate and varying jurisdictions.

Commissioner Brooks, what about the Albany-New York thing what is the trouble there?

Mr. BROOKS. I think that this is a general problem that we have, internally within the State as well as throughout the other States. There is a question as to whether the localities have really prioritized their caseload and ignore out of county cases because they have limited resources and they are dealing with their own cases.

We have raised this issue many times. As a matter of fact, we threatened Florida with cutting off doing any of their work here. I have not done it, but I feel like doing it because Florida is one of the worst States that we have.

Ms. ROUKEMA. That has been our experience as well in my district.

Mr. BROOKS. There is this incentive of collecting from another State, but it does not work. There is a lot of accounting that goes on, and that should be wiped out, but there should be some teeth in the law that there is better coordination on an interstate and intercounty basis.

The Albany case I am not familiar with, but I certainly will check into that because we should have better control within New York State than we do with other States.

Ms. ROUKEMA. Theoretically the wage garnishment should be operating though between Albany.

Mr. BROOKS. It is not on nonwelfare cases, and that is my point. That the law has got to be very emphatic and changed to include both ADC and non-ADC cases. It does not do that today. It is up to the discretion of the judge, as a matter of fact. In New York State, as an example, there is a payroll deduction order that has been on the books for many years. And the discretion of the judge is the rule of the day, and many of them will not use them.

Ms. TUTT. Our papers are here and in Florida. But in the meantime neither court, like they cut the check.

Mr. BIAGGI. They probably cut the check upon application. No one was there to respond to it.

Ms. TUTT. But like when I applied to them, when they were going—when the process was being made, they wrote me to let me know what process being made. Also, if they want to cut the check, OK, if there was reason to cut the check. The least they could have done was write me to let me know why the check was being cut.

Mr. BIAGGI. How many children do you have?

Ms. TUTT. One.

Mr. BIAGGI. How old?

Ms. TUTT. Fifteen years old.

Mr. BIAGGI. How about you, Yvette?

Ms. ALLEN. I have one. My son is 4½.

Mr. BIAGGI. Rita.

Ms. DONOVAN. I have eight, but I only have one I am responsible for because I have seven graduates, one more to go. For 3 years he has not given us a penny, and I know he was working because he told me with his own mouth, bringing home, taking home like $250 a week and refused to give me any money. And on to that, you know what he did in 1980, for 1981 tax return, called me early in the morning, I am so stupid, he had the nerve to put in the head of

the household, just to get more money, promised to send me some money. I never received one dime.

Mr. BIAGGI. Well, you could write to the Internal Revenue Bureau and bring that fact out and they will go after him.

Mr. BROOKS. One of the benefits is parents who are claiming these children as deductions when in fact they are not paying. We have to intercept this business, if IRS is astute, they will be picking up an awful lot of these cases.

Ms. DONOVAN. I would like to say one thing, too. I really have a very nice financial adviser. But the problem is when your husband goes to a place like Florida, it is just like they really cannot do anything. It is out of their hands really. My husband has a habit of jumping, just moving when he feels like he is going to be arrested, right. So in a case like that, what can the courts do with a man like that, who just jumps every time he thinks he is going to be punished. He just goes on to somewhere else.

Mr. BIAGGI. That is why we are trying to improve the legislation.

Ms. TUTT. I do not understand how mine can be in law enforcement. How can you enforce law when you do not obey laws?

Mr. BIAGGI. I do not understand that either. I do not mean that. I do not understand you are not able to collect.

Mr. BROOKS. A suggestion that just came to me while I was sitting here discussing this. Why cannot cases where there are interstate situations be referred to the Federal court? Would we have any better jurisdiction over that or more, better enforcement?

Mr. BIAGGI. That is a thought. Joan Kaplow.

## STATEMENT OF JOAN KAPLOW

Ms. KAPLOW. I cannot even figure out where to begin. I came to Manhattan in 1976 from Nassau County and I started a petition at that time for an arrear problem. As a matter of fact, I appeared before Judge Miller in 1976. And a payroll deduction order was ordered at that time. And I was told to expect the first payments within 4 to 6 weeks. That is the process of sending the order to the employer. The employer only has to send a check once a month. They do not have to send a check every week, even though the support order says you are to receive so much per week. The employer only has to write one check a month.

Mr. BIAGGI. But for 4 weeks.

Ms. KAPLOW. Right. Second, it just turned out that I had a very unlucky day that day in that the clerk of Judge Miller did not properly read her instructions and failed to write PDO, payroll deduction order, to be sent to employer, so that when my file was filed in the record room, no notation was made that the employer should receive a payroll deduction order.

And so when I recontacted the court after 7 weeks: not receiving any money, the answer was oops. So what was a 6-week arrear problem became an 18-week arrear problem. And when I came to court the second time, the personnel in the court refused to believe that this is what actually happened. And it took a judge a morning to go through. Could you imagine wasting the judge's time? To go through to finally call me back and say, "We apologize to you." And you are a bad man, Mr. So-and-so, for not sending money to

your children. So we are going to make you pay this $3,000 back at the rate of $15 a week. Well, can you imagine the man's elation? Talk about getting away.

Now, I had to borrow money. I also had to apply for food stamps. I do not have to tell you what this did to me, to everyone I knew, to my family, to my children. The abuse, talk about child abuse. The father is not only divorcing the wife, which is fine, and the children can cope with that. But when he starts divorcing the children, it becomes such a trauma to them that not only are they being denied his love and affection physically, but any means of supporting themselves, so that they can get on with their own lives.

Both my children are now 19 and 16, but when they were 11 and 8, my son started acting out terribly, and I believe it affected his entire school career. My daughter did not act out the way my son did, and her school career has been left pretty much intact. But this is an ongoing problem.

I have been to court in 1983 four times, in 1983. I was awarded an upward modification based on the fact that the man is earning $66,000, and because wife No. 2 was suing for divorce, and he marches into court with a support order from a divorce judge saying that he has to give her $275 a week, well, how could he be expected to pay his two only children, he has no other children, $150.

I do not seem to understand why their comfort is considered first and foremost before their children's necessities. The fact that they must have a place to live and they must have food and they must have clothing money and they must have allowance, is altogether proper. However, I do not think that they should have it before their children have it.

Mr. BIAGGI. Certainly there is enough money to go around.

Ms. KAPLOW. I think so. In this instance I would think so. However, even in this instance, in 1983, in May of 1983 I was before a hearing examiner and I was awarded $135 in child support a week because the man had to pay $275 a week to a second wife. And $15 a week again is payment of $2,000 in arrears.

My son is in college. My daughter is ready to go to college. $15 a week in arrears? And that order that became effective on June 2 is presently in arrears $1,800. Presently in arrears $1,800. So now the employer has just been notified, after a letter was sent to the respondent, that he had to pay up all the arrears or a PDO was automatically going to be sent to the employer.

I came down to court just to doublecheck because I had been burned once with an automatic PDO, and would you believe that nobody typed up the PDO and it was not in the file. Is that not strange? And so my case examiner, my financial officer, said, "But, Mrs. Kaplow, there is no PDO in here. They did not read the order properly. They did not read the judge's instructions." Tough.

It will take a month or so, and maybe we can get you some money. However, why is he afforded 15 days' notice in a letter, "Would you please pay the arrears, Mr. So-and-so?" I do not understand the court's attitude, that they must be afforded every opportunity, every discretion, every moment of compassion, and nothing is awarded to the children. Forget about the mother.

Mr. BIAGGI. We understand the nature of your problem.

Ms. KAPLOW. Fortunately, my children are not suffering for food.
Mr. Biaggi. Amy Fox.

STATEMENT OF AMY FOX

Ms. FOX. And neither is mine because I work two jobs.
Ms. KAPLOW. So do I.
Ms. FOX [continuing]. Seven days a week, about 16 hours a day, and have for the past 4 years, so I could take care of my son. Or so I could have enough money to be able to at least care for him in the interim while I try to fight for child support.

My ex-husband earns, and came to court, and I by coincidence also was one of the first people—I went to Judge Miller as well when she was just a judge sitting on the bench, before she became the administrative judge. She may be in the Supreme Court before I ever collect child support the way things are going at this point. She is a very good woman and she means well, but the point is the court is not enforcing its orders, any kind of orders. And if they do, they do it in the most meager of fashions; $15. My ex-husband hired an attorney that he paid $18,000 to avoid paying me $100 a week, and to get my child support of $100 a week reduced by $5. And for this I spent 23 days going to family court because no one would take a firm hand and say, Look, Mr. Jones, pay your child support. You have brought into us a financial statement here that says you earn $150,000 a year. You drive a $25,000 car. You belong to the New York Athletic Club. And on top of it all you are in debt to your mother, I understand, for $300,000. Your mother. Not the banks. Your mother. Now, may I suggest, Mr. Jones, you go down and ask your mother for another $3,500 and pay your child support. And, Mr. Jones, if I see you in this court again for the same thing, you are going to Riker's Island for 30 days or a few other alternatives that I have here, like cleaning up the Bronx, your own district there that has tons and tons of acres of land that are filled with nothing but dirty bottles and broken buildings, and it has been an eyesore for years. Why do you not send a crew of these fellows up there to clean up this mess for 30 days? It would not cost the taxpayers one red dime. And you could take care of all of this stuff.

What did the court tell my ex-husband, and there sits my attorney over there who has been faithfully representing me through the corporation counsel for free, and all their time has been wasted, because when we get right down to it, my son and all the children like him are being victimized by vagaries by the very system that was set up to protect him.

My case, when you get right down to it, because I followed it, I did not give up. I am a tenacious bastard. I kept going right back and I played it right out. I played the court game. I played it and played it. My ex-husband plays it, too, but he plays the court game much better than I do because he has got an $18,000 lawyer to pay. I have the corporation counsel who is handling about 1,000 cases just like mine.

Let me tell you something, when it comes right down to push to shove, they took my case, and Judge Edith Miller knows this, because I went through the law system down there, I went through

all the law systems, I wrote letters. You see those two bags over there, they are filled with papers and letters and petitions and my decisions on the decisions that they have made.

Mr. BIAGGI. What you are really saying, what all of you are really saying in the end, and it is a concern of mine because I have spoken to judges, I have spoken to people.

Ms. FOX. They do not enforce their orders.

Mr. BIAGGI. There is only one way to do it, and they will never do it.

Ms. FOX. If the jails are full and they do not want to send them to jail. Do not send them to jail. I am not interested in jail. Do you think my ex-husband for one moment would be up, picking up broken bottles up in the Bronx, if somebody said to him, Go to jail for 30 days?

Mr. BIAGGI. Never mind 30 days, 1 day.

Ms. FOX. One day. All you have to do is say post a cash bond. I asked Judge Tour, I said, "Please make him post a cash bond." No, he did not. And do you know what happened, he gave me a judgment. And my son, who used to be flown to Maine in the summer to go to camp, was pulled out of his boarding school because my ex-husband was exercising financial revenge on me. And my son who last year was riding polo ponies down in Valley Forge Military Academy, is now delivering Chinese food on Second Avenue. And I am living in a tenement building on Third.

Judge Tour, I said, please do not give me a judgment. How many times have I been here? How many letters have I written? He gave me a judgment and do you know what happened, my son and I drew up a list of banks where we thought my ex-husband might have money. We got the telephone book and we wrote down the banks, we wrote down the numbers of the banks, and we called the legal departments. Where do you go to deliver your summonses? I acted as pro se, as Judge Miller mentioned.

And I made my son, he got on his bicycle and he spent the month of August when he was 14 years old delivering summonses to the banks, to their legal departments, till we located the bank where he had $9,000 or $10,000, and we froze the account.

In the meantime, while I got the account frozen, my ex-husband has a lovely, high-powered attorney, so what does the guy do, they got me on service because my son is under age, he cannot serve summonses. And I had to go out and get an attorney who would take the case, on the basis of he would get a third of the fee, which he did. So instead of collecting $100 a week child support, no, I collected only about $66 because I had to give the rest to Mobad. Not that he did not deserve it. Anybody who makes a deal with this person and can get away with it. The law is wrong. The courts are not enforcing their judgments.

Mr. BIAGGI. The law is not wrong. It is the courts.

Ms. FOX. The courts are not doing their job.

Ms. TUTT. My child did not have to go to private school, to take her out of private school and send her to public school.

Ms. FOX. There is nothing wrong with the public schools, if they work, too. But they do not work and not a damn thing in this country now is working and I cannot understand why. And when you get involved in it you see. This guy comes and says, Let's have

more. We'll make another set of rules, and we will have the bonus system. And we will do this. And we will do that. And we will cost the taxpayers another $50,000.

Mr. BIAGGI. That is it. Mary Fudens.

Before we go on, let me give you my own experience. I would ordinarily be interested as a matter of human response, but let me tell you how furious I am. I have a daughter, my No. 1 daughter, who was abandoned by her husband who is making over $100,000 a year, while she just gave birth to her second child. She was still in the hospital. An infant and a 3-year-old granddaughter.

And absent her parents and her friends, I do not have to tell you the kind of life she will be subjected to.

Ms. FOX. Of course.

Mr. BIAGGI. I can get as passionate as you. I am here. This is going to happen.

Ms. FOX. You have to get a Federal law for the 52 States that is applicable every place for everybody on the same basis.

Mr. BIAGGI. That is what we are doing. That is what this legislation is.

Ms. FOX. And enforce it. And get the judges to enforce it.

Mr. BIAGGI. You were here when I asked that question before.

Ms. FOX. So the judges cannot get out of it. Three times you show up here, and you have not paid your child support bang, cash bond and so on.

Mr. BIAGGI. I do not think we will be able to produce the ultimate.

Ms. FOX. You have to do something because you have a financial tidal wave here. We all know the interest here.

Mr. BIAGGI. Relax, please.

We are going to produce something that is far better than we have today, I assure you. We are mindful of the situation. And we are going to try to develop some legislation that will bring about the kind of relief that is necessary. Mary Fudens.

## STATEMENT OF MARY FUDENS

Ms. FUDENS. Thank you. I think what I would like to do is give you actually a synopsis of what has happened to me since the time I was divorced. And I can sort of relate to what Amy is saying. The only difference, I presume, is that my husband is one of those self-employed professionals.

Ms. FOX. Mine, too.

Ms. FUDENS. My ex-husband left more than a year before we were finally divorced. I was the one who sued him for the divorce on the grounds that he had abandoned the family. When he left for several months he paid nothing toward the support and maintenance of the family. After a time he began to send me $40 a week.

During the separation period, my only other source of support was from the small sporting good shop which I owned at that time, and the support was really minimal.

The financial settlement which went into effect as a result of the divorce amounted to $800 per month in alimony, $400 per month in child support for the 3 children, and the transfer of the title of the house to my name.

My children at the time were 15, 13, and 8.

Besides the monthly upkeep on the house, which amounted to more than the amount of alimony and support, that I was receiving, and because the income from my business was very small, my mother had to move in to help us out.

There was a joint pooling of resources we felt would enable us to manage financially. As it turned out, my mother ended up basically buying the children clothing, and buying the food for the house.

It also should be noted that my ex-husband is a veterinarian, who vacations at least six times a year, and who subsequent to the divorce opened an animal hospital worth approximately at that time $500,000, and who has always kept two impeccable sets of books which allowed him naturally to cheat on his income taxes.

Mr. BIAGGI. Did you tell the IRS that?

Ms. FUDENS. No, because I was advised by every single attorney not to do it. It would be to my disadvantage as much as his.

Mr. BIAGGI. Did you ever tell him you would do it?

Ms. FUDENS. Certainly. He told me I would be the one to suffer.

Mr. BIAGGI. How would you suffer anymore than you are?

Ms. FUDENS. If he were to go to prison.

He brags to the children that his net worth is $1 million. He paid support on a regular and timely basis for approximately a year and a half. And in January 1982, when he moved in with a woman, he stopped paying for no explained reason.

Mr. BIAGGI. Mary, we have your statement and I have read it. I see where you are.

Ms. FUDENS. Actually, the point where I really am right now that what he has done is provided an artificial economic hardship that has really totally been an emotional abuse to my children. Forget the physical abuse that the children are receiving in many instances. This has been an emotional kind of thing.

And my children at this point being 16 and 18 and having had a great deal until the last 3 years have finally succumbed to the pressure, the financial pressure, and the lack of money that I have been able to provide for them, and at this point one of them has left and she is living with her father, at least temporarily, because he has made promises, which of course immediately he rescinded after she moved in with him. Another one is finally in school after waiting an extra year to go. And only because she has been told that unless she comes and stays with him when she is on vacation, she will not be allowed to continue school.

And I am just frightened to death that each and every single day, that my little one will be gone next. At this point I have a new job. And all of the things that Judge Miller said, and I certainly found she was excellent, are the things I have to deal with each and every day.

I can work 12 hours a day, but then, of course, who is going to be home to take care of my son, particularly now that my older one has gone with him.

It is a situation of "What does one do?" And I do not know what to do. I do not have an answer at all. I have been through courts, I have been all over a million times, and at this point I have no place else to go. My last attorney told me to pray.

Prepared statement of Mary Fudens follows:]

PREPARED STATEMENT OF MARY FUDENS

My name is Mary Fudens and I have come here today to tell you of the devastating effect that the nonpayment of child support has had on my family.

My ex-husband left me more than a year before my divorce was finalized which occurred in July, 1979.

When he first left he paid nothing toward the support and maintenance of the family. However, after a time he began to send $40,000 per weeks. During this separation period, my only other source of support was from the small sporting goods shop which I owned.

The financial settlement which went into effect as a result of the divorce amounted to $800.00 per month in alimony, $400.00 per month in child support and the transfer of the title of the house to my name.

My three children were 15, 13 and 8 years old at the time.

Because the monthly upkeep on the house amounted to more than the amount in alimony and support that I was receiving and because the income from my business was very small, my mother moved in with us in the hope that a joint pooling of resources would enable us to manage financially. As it turns out, my mother ended up buying the food.

It should be noted that my ex-husband is a veterinarian who vacations six times per year and who, subsequent to the divorce, opened an animal hospital worth $500,000.00 and who has always kept an impeccable set of books which allowed him to cheat on his income taxes in the most prodigious fashion. He brags to the children that his net worth is one million dollars.

He paid the support on a regular and timely basis for approximately a year and a half. In January, 1982, he strapped paying for no explained reason.

By this time I had already put my house up for sale. I also had just started up a new pro shop after closing my other one at a loss and was finding it difficult launching this new business because I was so strapped for money and because of the economic recession. The taxes on my house alone had increased by $500.00 since the decree was entered.

I wrote my ex-husband a letter informing him that if he did not begin to pay and make up the arrearages I would have to start an action in court. He answered my letter by suing me for the custody of our children.

It should be noted that although the children were available for him to exercise his right to visitation, he visited sporadically and at his convenience.

From January 1982, through November 1982, he paid no support whatsoever, and finally in November 1982, we got into Supreme Court after 2 or 3 adjournments and several postponements and with my ex-husband being cited for contempt of Court.

By the time the case was heard I had lost my business and was in debt due to this loss, my house had still not been sold and I was in more debt having hung on to it all these months practically living only on borrowed funds.

He lost his action for custody and was ordered to pay the arrearages accumulated over 11 months. He did, in fact, repay me most of the money that was owed.

It should be noted that since the divorce he has made every effort to bribe the children in the hope that they would choose to live with him, and if bribery didn't get the desired result he would trap them in his car or in a room during their visitations with him and threaten to disown and/or disinherit them and sermonize them on how selfish and money hungry I was. He even told them that I had probably hoarded money and stashed or buried it to be used for my own purposes at some future time.

My oldest child was to enter college in the fall of 1982 but he refused to pay for the schooling as according to the agreements and she was unable to enroll. Instead, she obtained part time employment and as a result in Dec. 1982, he stopped paying support for her on the grounds that she was an emancipated minor.

I waited four months in the hope that he would resume payments and I would not have to start another action in court. However, after 4 months, I signed an enforcement petition in the Family Court.

It should be noted that just prior to this I sold my house from which I dervied no financial gain because of my business and personal debts.

I proceeded to rent a house for $800.00 per month. My children became more depressed and miserable than ever as a result of the move, resenting me, the move and the lowering of our lifestyle. They referred to the newly rented house as a house.

While I was waiting to be notified of a hearing date in Family Court, I was forced to apply for Public Assistance and was advised that because my rent was so much above standard that I would have to move or obtain a letter from the friend who

was helping me financially stating that the balance of the rent not covered by the Public Assistance standard would be guaranteed. After numerous hours of gathering corroborative paperwork, my grant consisted of $14.00 per month, food stamps and a medicaid card.

In the meantime, my ex-husband had promised to send my middle child to private school if she would live with him. She chose to move in with her father and promptly thereafter he advised her that he could not afford to send her to private school after all. She has remained with her father anyway, since the private school notwithstanding, the improved standard of living came as a relief to living in my household which was teetering on the brink of financial disaster.

Because she was no longer with me, my alimony was dropped by $250.00 and of course I lost the support for her also so my financial plight worsened.

I appeared in Family Court for the first time on 6/15/83 and my ex-husband's attorney failed to appear so the matter was adjourned.

It should be noted that my oldest child moved in with her father and prepared to enroll in college because, in fact, living with her father was the only way she could insure his paying for her schooling.

I am now left with my youngest child and am receiving $400.00 per month in alimony and child support.

Although I have hired an attorney to represent me in the Family Court action, it appears that I have lost the case because in fact I no longer have 2 of the 3 children whose support I was asking in the first place.

The daugther who most recently left did so without even so much letting me know and in my absence returned to my home and with my ex-husband's help removed her bedroom furniture in its entirety. I was not aware of this until the next morning when I woke up to see the bared room with only the curtains having been left.

My ex-husband is now threatening to cut off what is left of the support completely because he is attempting to bribe, threaten and pressure my youngest child into moving in with him.

My greatest fear upon awakening each morning is in preparing to leave for my newly acquired job, finding another room bared and my last child gone.

Ms. ROUKEMA. I have no questions, but you have one more point?

Ms. ALLEN. Like I said, my son is 4½ years old. I got legally separated when he was 6 months old. Since then I have been working fulltime. He has been with babysitters for all his life. When I first came to the court in October, he tried to stop child support, which he had not given me any for the last 2½ years because he said he did not have visitation rights. Which my attorney before I left Albany had tried to write up two visitation rights. His attorney and him denied both of them.

So I have made every effort, but he has made no effort at all.

Ms. ROUKEMA. We have some time constraints here. I am just going to combine my comments very briefly as observations. I think your collective stories simply reinforce, not simply, but importantly reinforce the basic convictions that Congressman Biaggi and I and others who are working on reform here have had. And one is the fact that basically and fundamentally we should do what we can at the Federal level to remove children from being in the position of being pawns, pawns in divorce cases.

And to do that, we have to treat this support obligation as a legal obligation and do whatever is possible to make it a federally enforceable program so that the legal obligation can be enforced through the courts.

That is going to be the most difficult part of this. The part that we can do, and I think do well, is to require mandatory wage withholding with reciprocity from State to State, which means that cases in Florida or even cases between counties in New York, can be enforced with the help of the Federal Government, and the State agencies.

Ms. FOX. This does not apply to people whose husbands, and very often these people are well-to-do people.

Ms. ROUKEMA. I understand that. One of the reasons and there are a number of reasons for this subject coming to the top of the agenda, so to speak, is that it is growing in all income levels.

Ms. FOX. Exactly.

Ms. ROUKEMA. And affecting all age groups. Someone here mentioned grandparants. I was astonished at the volume of mail I received from grandparents when my legislation was first introduced, because I had not even begun to think of that aspect of the problem, a number of grandparents who are supporting their grandchildren to keep them off food stamps and welfare.

Let me point out to you that you have emphasized the need to redouble our efforts to make certain that it is not only national but that delinquency not be permitted. And I guess this is my broken record. But it does not sound like much to the outside world to say "Give the guy a chance and let 2 months go by." But 2 months—first of all, it undermines the legal system, that the fact that it is a legal obligation. And, second, 2 months rushes into 3 months or 6 months before anything gets operational, plus, to repeat what I said earlier, a delinquency factor, permitting delinquency, rather than immediately establishing wage withholding as mandatory, requires this need for the whole continuous superstructure and the continuing legal revolving door.

I can assure you, you are still going to have the court system.

Ms. FOX. We have to tighten things up at the court system.

Ms. ROUKEMA. That is true. But we cannot solve the whole judicial system, but we can redouble our efforts to make sure that there is immediate, mandatory wage withholding and that it be national with reciprocity enforced through the Health and Human Services Department, and that we thereby remove the children from the emotions of other tangential court actions in divorce cases.

I thank you for your testimony.

Mr. BIAGGI. Thank you very much, ladies.

Dr. Vincent Fontana, chairman of the mayor's task force on child abuse.

## STATEMENT OF DR. VINCENT FONTANA

Dr. FONTANA. I am going to read the testimony. If it is necessary, I will not read the testimony and submit it to the committee. But I am happy that Congressman Biaggi has asked me to testify at these hearings. We go back maybe 25 to 30 years, and Congressman Biaggi and I were the prime movers, and pioneers in the field of child abuse, when people would not listen to us. And Congressman Biaggi, I must say, with Senator Humphrey for having put together what is a center for the prevention of treatment of child abuse, which provides millions of dollars.

This hearing is all about children. Basically, that is Congressman's and the panels concern, because really what we are saying here is that we are supposedly a child-oriented society, and we are not a child-oriented society at all, because our legal system is not child oriented, and our social system is not child oriented, and our

people, our human beings are not child oriented, unfortunately. And we are seeing more and more child abuse throughout this country in spite of all our efforts, simply because children are becoming less important in our lives. It is more important to satisfy our own needs and children come last.

I think we have to ask ourselves certain questions. How long are we going to continue using children to satisfy our own needs, meaning as parents? And how long are children going to suffer psychological, verbal and physical abuse because of parents' frustration and anger? And we saw a lot of that frustration and anger today.

I mean, these are parents who truly care about their children, but at the same time becoming caught in this web of divorces and separations and anger and frustrations, they inflict needlessly, and perhaps not even realizing it, that their children are the innocent bystanders. They are the innocent victims of divorce.

And one of the women mentioned the fact that my children did not suffer from the divorce, but they are suffering now because their father is divorcing them. All children, and I have been a pediatrician for 30 years and dealt with children and families, all children suffer from divorce. And having the parents say to the child, "Do not worry, Your father is not divorcing you, or your mother is not divorcing you. We are divorcing each other." Does not help the child who is being abandoned, as far as he is concerned. And the younger the children are, the worse.

Now, you have frustrations, you have anger, you have within the family unit the fact that parents are not getting along with each other and inflicting further abuse and psychological abuse can be very damaging to the child, whereby his school suffers, the fact that he suffers with his peers, his social life suffers, and before you know it, you have a child who is damaged simply by the fact that we have forgotten the fact the child exists in the family unit and that we have tried to satisfy ourselves as parents because our needs came first.

And then we have child support, which is another terrible, terrible inflicted abuse on a child, because here again we are talking about child support, and the parents forget about the fact that child support is important, not only for the physical well-being of the child, but also for the social well-being of the child and also for the psychological well-being of the child in the sense that father and mother are concerned about you. We are divorced, perhaps, but we are concerned about your schooling. We are concerned about your clothing. We are concerned about your medical needs. We both care and love you.

But too much is being said about "I love you. I love you. I love you." Which is a lot of bunk because children hear it and do not feel it and do not see it, simply because the payments are not coming in and before you know it, mother is upset and she takes her frustration out on the child. The father takes out his frustrations on the child. And the child is made the innocent victim of a divorce and separation.

And then the final blow is when the payments are not coming in. The final blow is that the child says, "Pop does not care. He does not give a damn about me." And that is psychologically more dam-

aging than the fact perhaps there is not bread on the table. That hurts.

And I am seeing more and more children coming into me and saying, "I am a victim of a messy divorce. My parents are really messing things up." But they are the ones that are suffering. And these kids cannot deal with their father anymore. They cannot deal with their mother anymore. And it really does not make any difference, that is inflicted abuse. And it may be you may not realize you are doing it, but the child feels it.

It is important to know that two parents—there is no perfect parent. But both parents, in view of their being caught in this web of conflict and anger and frustration, the child suffers, innocently suffers.

The point also made on the child payments, and it is all in here and I will not go through reading this, is that fact that when the payments do not come in, there is suffering on the part of the physical well-being or perhaps the psychological wellbearing, but sometimes payments do come in and they are not being properly spent. We have to look at that sort of thing, too. And if we have to look at the problem and be objective about it, we have to look at it through father's rights. There have to be certain changes in custody within the court system so that the father has certain rights in these situations, so that you do not build up a frustration, and you do not build up an anger, and you do not build up a hate or a dislike that he is getting a fair deal from this divorce proceeding, so that he can give these child payments in the spirit that he wants to give them, in the fact that he is not being made a victim as well.

But I think we have three victims here. We have the two parents and the child. And as a pediatrician, I am truly concerned about the child, because if the child is young enough, he is going to grow up, and when he grows up he is going to suffer psychological complications that are needless because two parents have turned their back on their child and have not looked at the best interests of the child.

When I say that the courts have failed the children, the courts have failed the children. In divorce proceedings, in child abuse and neglect proceedings, and sometimes the parents go to the court and they say the other parent is physically abusing the child. That court, that family court, or whatever court that trial was in, that child should be investigated and protected to see whether indeed the child is being inflicted abuse by the parent.

And oftentimes the court does not look into it and the child continues to get physical abuse as well as verbal abuse. And let us understand that verbal abuse and psychological abuse of a child can be far more serious than beating a child. You do not have to break a child's arm to abuse a child. You can break a child's spirit.

And I am seeing more and more of that, so that what we are seeing now the throw-away children and the runaway kids and the kicked out kids are a result of the abuse that is being afflicted in the home, whether it be from divorce, separation, frustration, anger, the fact that the payments are not coming in on time, it all builds up. The volcano erupts, and who suffers, but the child.

I have testimony here that brings in all these points, but I think reading it will sort of make it cold, and I do not think this is a sub-

ject that has to be dealt with in a cold way. I think there is a great deal of emotion attached to it, and I think we have been turning our back on the kids, that we are worrying about ourselves. And I think we should stop worrying about ourselves, and think primarily what is in the best interest of the child. And I think we should all, both parents, father and mother, take on the responsibility that this is their child, and that they have the responsibility for the well-being of that child, psychologically, physically, clothing, shelter, and education.

But if we get into a battle within the family unit, that causes parents to strike out at each other, and then use the child as an in between to get back at the other parent, then we are really defeating the purpose of the courts. We are defeating the purpose of the children's rights. We are defeating the purpose of humanity and we are defeating the purpose of our whole Nation because the future of our children is dependent on the kids that we are raising today. And as I see it, if this continues to go on, and the Congressman knows it better than I, that we are not going to have a society and we are not going to have a nation simply because our laws are not working, our courts are not working, and we are turning our backs on kids.

And I must say I go back many years with the Congressman. I saw his picture in the paper today with all the grandchildren, and it was something I just could not believe. I figured this is all made up. I would like to think we are still young at heart, if nothing else.

I'm pleased to be here. This is a terribly important subject. And you know a hearing is important, but the world should know about what is going on. The States should know what is going on. And if it were not for Congressman Biaggi and others, no one would know about child abuse in this country. We would not have a center. And I think it takes hearings such as this, and people that are interested, that are sitting up there that are going to get something done, and things will change.

And I think the yelling and the screaming and the carryings on perhaps will bring something, but we have to be levelheaded. We have to support the Congress people, in their laws, and get people out there to understand the problems.

But more important parents have to get together and say "Forget you. Forget me. What about Johnny? What about Mary?" If not, we are going to lose Johnnys and Marys, and then we are going to have nothing.

It is idealism and that is important, because if we lose idealism, and that is important, because if we lose idealism and we lose our respect for human beings, and we lose our respect for children, our respect for life in general, the quality of life, then there is nothing else that we can look forward to and I think that is where we are. We are at the brink of social disintegration, simply because the family unit with this epidemic of divorces and separations, the loss of the expanded family are using our kids as innocent victims of their frustrations and anger.

And I blame this on parents as well. It is not one sided. And this is where I think, as a pediatrician, that testifying at this hearing I think is important.

We are destroying our children to satisfy our own needs. And that is the message we have to listen to today.

[Prepared statement of Vincent J. Fontana follows:]

PREPARED STATEMENT OF DR. VINCENT J. FONTANA, CHAIRMAN, MAYOR'S TASK FORCE ON CHILD ABUSE AND NEGLECT, NEW YORK, N.Y.

We often react with horror to child abuse. This reaction is a natural response to a disturbing event, but it obscures our understanding of why abuse happens. Although we often feel that abusing parents are monsters, this feeling sometimes disappears upon acquaintance with them. Abusing parents, when seen in treatment programs, frequently turn out to be like most other people or hardly distinguishable from the ordinary citizen. This experience then prompts us to say that everyone has the potential to be an abusing parent. Yet, there is something different about the abusing parent, a something that clinical experience has begun to define for us.

One of the most recent advances in our understanding of the etiology of child abuse and neglect has been the development of the "stress model". The stress model depicts child abuse as a consequence of or reaction to various stresses parents experience. These stresses can be personal—a bad marriage or relationship—situational—unemployment—environment—bad housing. We know that the mere presence of such stresses does not prompt all parents to abuse a child. It is fairly well recognized that parents who themselves were deprived of parental love and support, who were reared in a violent environment are most vulnerable to a loss of control during times of stress. We believe also that intra-personal or psychological differences may explain why some stressed parents abuse a child but others do not. When the psychological condition and the external stress occur together, there is a strong likelihood that child will be abused.

The stress model suggests various prevention strategies: (1) mental health services to ameliorate the psychological factors; (2) intervention services and human support systems to relieve stresses. Although we do not have good aggregate data on the larger social forces that constitute stresses on parents, we know from clinical experience that financial stresses frequently occur in child abuse cases. Data from the National Center on Child Abuse and Neglect gives strong evidence that while reported incidences of child maltreatment appears in all economic and social classes, they appear with more frequency in families experiencing economic stress and financial hardship.

Incidences of child abuse may increase as the number of unemployed parents rises, and as more and more families face frustration and insecurity originating in the home and in the workplace.

Adequate financial resources are a life or death issue for all human beings; none of us can survive without funds to purchase food, shelter, clothing, medical care, and the other essentials for maintaining human life. In our society, many other items of daily living have come to be viewed as important, if not essential. Having these "consumer goods" affects how we feel about ourselves, the impact of what the social scientists call "the quality of life satisfaction scale". Being poor, or losing a previous economic status is not a good experience in our society, which measures success and self-worth by economic status, so often.

When parents separate or divorce, economic hardships are created. Because separation or divorce does not increase the total amount of resources available to each parent, there has to be an economic decline for both parents. Neither can continue to live at the level to which they have become accustomed. This inescapable fact of life becomes harsher when a father refuses or is unable to contribute to the support of children who remain in the custody of the mother. It creates stresses for the mother and additional hassles. It may mean the difference between applying for welfare or avoiding the welfare system. It is possible that the impact of nonsupport is greater on middle income mothers who are accustomed to living at a far higher level than is attainable through a welfare grant.

I support Congressman Biaggi's amendment, requiring the National Center on Child Abuse and Neglect to study the impact of non-supporting fathers on the causation of child abuse. The more we can learn about the possible connections between various types of stresses and child abuse, the better we can help protect children, the most innocent victims of these stresses. Parents, too, are sometimes the victims of stresses they cannot cope with.

We know that many of the identified and reported cases of child abuse come from the poorest classes in our society. Many of us have felt, for a long time, that abuse involving middle class or upper class children remains unidentified and unreported.

Congressman Biaggi's proposal offers us an opportunity to examine potential child maltreatment in the middle class.

I also want to suggest an additional related area of concern, child support issues are frequently tied to custody issues, as I am sure other witnesses will discuss today. We need to understand better the impact of such disputes on children. We all know stories of how some parents use their children as weapons against each other, to seek revenge or to express hurt and outrage. This is improper treatment of a child, just as demanding that a child choose allegiance to one parent or the other. In extreme situations, such children are the victims of emotional maltreatment. All child abuse is not physical—emotional abuse can be just as devastating and psychologically damaging to the child. Yet, our courts, in settling custody issues, frequently overlook how the parents are using a child against each other, and the probable effect this has on the child.

Recent reforms have begun to address this problem: joint-custody provisions and better control over child snatching. But we need more. The laws against child snatching apply when a court has rendered a decision. Under our current system, however, a parent can snatch a child, or run away with a child, and then begin a court action, usually in another state, and there is no sanction against such behavior. In effect, such parents can use the legal system to take the child. We need laws that will prevent such abuses. Our marriage laws should recognize that both parents have equal claim to their children, and that neither parent has a right to run away, unless there are serious protective issues, from the marital residence to another jurisdiction. A number of commentators have suggested that fathers would be more willing to pay support if they felt the legal system gave them a fair deal on custody.

During support and custody actions, parents frequently assert that the other parent is unfit. Such assertions generally amount to an allegation of abuse or neglect. We need procedures that will prompt judges, whether in Family Court or Supreme Court, to request a child protective investigation in these instances. In New York City, the New York Society for the Prevention of Cruelty to Children investigates over 600 such cases each year, because judges have been asking the society to evaluate these claims. The director of the Society tells me that more of these claims turn out to be true than a casual observer would imagine. Many of them are true. They are not just diversionary attempts to distract the judge, concocted by the attorneys representing the parents. Some of the charges are nothing more than this, but enough are true to warrant closer attention and the development of a uniform social policy to ensure that the children who need protection in these situations actually receive it. The judge cannot perform the type of investigation needed to decide the accuracy of these claims, and I believe all judges everywhere need to have available the type of service the New York Society for the Prevention of Cruelty to Children performs for them in Manhattan.

This is not a digression. It suggest to me that the connection between support issues and child abuse, which Congressman Biaggi is concerned about, exists and is complicated enough and serious enough, to warrant the type of study he has proposed. I hope the Congress and the Senate will move ahead with it.

Mr. BIAGGI. Doctor, first I want to thank you for making yourself available. I know the demands on your time. Thank you for your comments. We go back a long, long time long before when I was a police officer, many, many years ago.

Dr. FONTANA. And going to the Latin Quarter. You remember?

Mr. BIAGGI. Yes, I remember. And it is true, we go back a long time on this issue.

But I think the precise question I want to put to you and I read your testimony, and you support my amendment which will call for a study.

Dr. FONTANA. There is no question that if we support Congressman Biaggi's amendment for a study with the National Center for the Prevention of Child Abuse and Neglect that will get more insight on the incidence of child abuse within the middle-income group, because there is an awful lot of child abuse going on in middle-income. We say it goes on in all stratas of society, low income, but the low-income surface, the welfare cases are seen in

the emergency room, they are seen in the clinics, et cetera, they are reported by neighbors and friends. But the middle-income, this law, this law that Congressman Biaggi would like to get through, this study, would show exactly what is going on in middle-income when it comes to the hidden types of abuse, mainly psychological and verbal abuse, or complete abandonment, abandonment of the child for no reason, ther than the fact that they want to do their thing.

Mr. BIAGGI. What I would like to do, I do not think I said it while you were here, is enlarge the definition of child abuse to include nonsupport, nonpayment of child support.

Dr. FONTANA. I think from what I said it is pretty clear that if you do not make your payments for child support, you are abusing, and child maltreatment comes in all sorts of ways. It is child neglect, for one thing. You are neglecting your child. And it is abuse because it is psychological abuse on a child, when the child does not realize that the father cares for him and does not love him anymore, and the fact that he can interpret love simply by the fact that the payments are coming in or not, is the only way of a little child saying, "My daddy loves me or my daddy does not love me, or my daddy cares for me or my daddy does not care for me."

That is not the only criteria, but it is one of the major criterias little kids look at. If daddy cares, the payments come in. If daddy does not care, the payments do not come in.

Ms. ROUKEMA. Dr. Fontana, I want you to know that I was absolutely thrilled when I saw your name on the witness roster. I had Congressman Biaggi's kind invitation, without knowing that I would have the additional pleasure of meeting a man whom I have long admired.

And you know New York City television dominates New Jersey, at least the area of New Jersey where I live, and with my husband a practicing psychiatrist, we have followed your career and your contribution in the area of child support. And I have been one of your fans long before I ever got in Congress. I just wanted you to know that.

I especially appreciated your comments on the relationship between child abuse and child support. People have frequently asked me how did I get onto this subject. Well, in truth, it first came to my attention as a legislative matter, not a personal matter, but a legislative matter, when women in the Congress were concerned about the Women's Equity Act, one part of which was the subject of child support. And I immediately responded to that aspect of it.

The more I got into it, the more I realized the ramifications. It is not a subject that many people wanted at that time to talk about, in terms of fundamental reform. And I think your comments today have reinforced to me the fact that my judgment and Congressman Biaggi's judgment were correct from the beginning, that we are not talking superficially about matters are legal entities. We are talking about the cost to society, and a personal cost that we have not been able yet to plumb the depths of.

Dr. FONTANA. And I think the testimony of each one of the mothers this morning indicated the fact there was abuse going on within the home, whether it was physical abuse or psychological

abuse. Every one of the mothers expressed that feeling, that the children were being abused in the process.

So it is very important. In fact, I would think it is a subtle type of child abuse that is not being recognized.

Ms. ROUKEMA. That is an aspect of the question that I have not yet addressed personally, although I recognize the Congressman's leadership there. But I just want you to know how terribly important I think your testimony has been, what a tremendous contribution it has been. And I will seriously take under consideration your comments regarding the role of the courts in this matter.

Dr. FONTANA. Thank you.

Mr. BIAGGI. Fran Mattera. At this point I must, because I must be in Washington for a 4 o'clock appointment, and I have a 2:30 flight out, Congresswoman Roukema will take over and even she has some restraints, so we are going to ask the witnesses to please indulge our concerns. We have your written statements that will be included in the record. We have been here long enough to know that you are genuinely interested, and especially you, Fran, we have been in touch and we know exactly where we are going and what we are trying to do. I welcome the opportunity to have you testify, but I am just apologizing for the need to leave prematurely.

I want to thank my colleague, Ms. Roukema, for being kind enough in assuming the chair, and for her cooperation and leadership. Her role is very significant. Especially because of her proximity to the present administration.

## STATEMENT OF FRAN MATTERA

Ms. MATTERA. Mr. Chairman, members of the Subcommittee on Select Education, my name is Fran Mattera, founder and president of FOCUS, For Our Children and Us. FOCUS For Our Children and Us, is a New York State funded paralegal agency, and has as it primary objective the enforcement of court awarded child support, to avoid the experience of women and their children having to sustain themselves on the public assistance roles at the expense of the taxpayer. Because they have exhausted their resources and because free legal services are not available in child support matters, FOCUS is their last resort.

In the 12-month period, April 1, 1982, through March 31, 1982, a total of 3,212 clients were served in three offices. Of those 94 percent were women and 6-percent men. Incidentally, three offices are in Nassau, Suffolk and Queens County.

Improvements in the child support system are clearly an economic issue for women and children. We find that the present system lacks reliability and is very slow to react to children's needs. On the local level we find that it takes 6 to 8 months to procure child support and in over 50 percent of the cases, the court order produces little or no results for the child.

The interstate reciprocal procedures take even longer because enforcement procedures vary from State to State. If they exist at all, the results are even more frustrating.

Of greater concern is the possibility that the very existence of the welfare program has caused some absent parents to conclude that if they have marital difficulties, they need not worry about

the consequences of financially abandoning their families. The Government will provide assistance while they establish new lifestyles and often become parents of more children.

Over 7-million children are presently receiving public assistance in the United States through various Federal and State welfare programs. The 1970 census figures show 8,265,500 children living with one parent. By 1980 this figure has grown to 12,163,600, nearly a 50-percent increase.

In 1956 the total cash benefits expended to assist children was just over $617 million. By 1982, that figure has increased to $12 billion annually, a 2,000-percent increase in 22 years.

Additionally, billions were spend on food stamps, medical benefits and other related programs. A California study of 3,000 divorced couples found that 1 year after the divorce, the wife's income dropped by 73 percent, while the husband's rose by 42 percent. The full collection of child support is the difference between poverty and self-sufficiency for most families.

A study presented to the Senate Finance Committee by M. Winston and T. Forsher, "Nonsupport of Legitimate Children by Affluent Fathers as a Cause of Poverty and Welfare Dependence," stated that nonsupport of legitimate children by affluent fathers was often a cause of poverty and welfare dependence. Another conclusion in the study was that attorneys and public officials found child support issues boring and in some instances even hostile to the concept of fathers being responsible for their children. This was my bible in 1974 when appearing before legislators, much of it holds true today.

This letter introduces a typical problem many of our clients have in obtaining court ordered child support payment through the USDL.

Dear Ms. Mattera: I am writing in reference to a matter that maybe, you could be of some help for me. I had a USDL filed for child support with Broome County Family Court here in Binghamton, N.Y. The respondent resides in Phoenix, Ariz. The USDL was filed here February 1982. It was finally heard in Family Court in Phoenix September 1982. The respondent was told to pay $200 a month for support commencing October 31, 1982. He paid exactly $400 since that time. I have written letters to Family Court in Phoenix and I have called repeatedly to my local support unit and Family Court and they all seem to pass the buck. At any rate, I am not getting anything in the way of support and no one seems to care. The respondent lives there and I happen to know he works. I really do not know what the problem is with the courts out there. I am enclosing a copy of the court order. The court in Phoenix does not seem to want to respond to any inquiries. I have even called and they will not give any information over the phone, but they do not inform a person by letter either if the respondent is a deadbeat or not. I would appreciate any advice or help you could render to me. Thank you for your time in this matter.

FOCUS, For Our Children and Us, Inc., endorses and supports H.R. 1013, Congressman Biaggia's proposed bill to establish a bipartisan national commission to study ways of improving Federal and State efforts to enforce child support obligations and recoup delinquent child support payments.

FOCUS, For Our Children and Us, Inc., makes the following recommendations:

Under IV-D Federal Regulations, the rights to support payment are assigned to the department of social services so long as there is an active public assistance case. This in its strictest interpretation, that is, New York City, denies the individual welfare recipient

speedy access to the court to petition in her own behalf for support adequate enough to remove her and her children from the welfare rolls. Only department of social services can file these petitions. We recommend that these title IV regulations be amended to allow the welfare recipient free access to the courts.

Although some States use payroll deduction for securing child support payments from salaried individuals, not every State does so. FOCUS recommends that a Federal mandatory wage deduction law be enacted and enforced with that wage deduction to follow the obligated parent from State to State for whatever job he may hold.

At this time there is no wage deduction or any other means of securing support from the self-employed person who is delinquent in child support payments. We recommend that the IRS be empowered to collect child support payments in the same manner as quarterly estimated taxes are collected from the self-employed.

The department of social services can now seize the IRS refund check of an obligated parent whose family receives public assistance. FOCUS recommends that families not on welfare have access to the refund checks of those who are in arrears of their child support and/or maintenance payments.

FOCUS proposes that Federal enforcement of child support laws be strengthened to mandate: (a) Where violations are willful, incarceration of violator; (b) undertakings, or bonds to ensure future payments; (c) Federal law for sequestration of property regardless of State in which property is located.

We propose that the Uniform Reciprocal Enforcement of Support Act be made truly uniform, that is, in the adherence to provisions of divorce decrees from other States and in consistent enforcement of court orders.

We recommend that there be a national centralized computer system for keeping records of those responsible for child support who are delinquent in their payments and adequate means to implement the collection of arrears.

I also want to mention, while typing this, I heard—well, I will read.

Perhaps a system similar to that seen on the recently aired September 9, NBC "Today Show" might assist in recording and collecting nonpaid child support.

Here the banking industry introduced a new concept called plus systems. This new concept is a national computer system used by 34 major banks today. It provides for withdrawal of moneys from a personal bank account from anywhere in the country just by a cardholder inserting a plastic bank card into a computer.

For example, if you were visiting in San Francisco, and wanted to withdraw money from your account in Times Square, all you would have to do is insert your card in a bank computer in San Francisco, and the money would be deducted from your account in Times Square. If the banking industry can utilize this new advancement then why cannot the Federal Government provide for such a system to enforce child support nationally?

Please read the additional material enclosed. It will be interesting and informative.

Thank you very much for your attention.

[Prepared statement of Fran Mattera follows:]

FRAN MATTERA
Founder & President

FOCUS

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'FOR OUR CHILDREN AND US', Inc.

## STATISTICS:

Some recent statistics we received from Sen. Alphonse D'Amato's office reveals the national dilemma in which recipients of court awarded support find themselves.

| | |
|---|---|
| Number of families receiving AFDC* | 3.5 million |
| Average monthly benefit | $250 |
| Number of Children receiving AFDC | 7.8 million |
| Situation of Father | |
| Deceased | 3% |
| Unemployed or Incapacitated | 11% |
| Absent from Home | 85% |
| Parents Divorced | 21% |
| Parents Separated | 26% |
| Unwed Mother | 34% |
| Other | 4% |
| Father's Whereabouts Unknown | 42% |
| Child Support Awarded | 29% |
| Average monthly award per family | $129 |
| Child Support Paid | 13% |

Another interesting statistic was the Child Enforcement Program Activities for AFDC families for 1980.

*Aid to Families of Dependent Children

| 3 Largest Programs | U.S. | CA | NY | MI |
|---|---|---|---|---|
| CASELOAD | | | | |
| Number of absent parents* | 4,583 | 850 | 485 | 304 |
| as a % of families receiving AFDC | 128% | 170% | 137% | 134% |
| COLLECTIONS | | | | |
| Number of families* | 497 | 80 | 38 | 69 |
| as a % of caseload | 11% | 9% | 8% | 23% |
| Average amount collected per family | $1,214 | $1,182 | $1,295 | $1,122 |
| Collections as a % of Total IV-D Administrative expenditures | 134% | 110% | 81% | 294% |
| NEW CASES* | | | | |
| Opened | 1,736 | 307 | 154 | 104 |
| as a % of caseload | 38% | 36% | 32% | 34% |
| Paternities established** | 144 | 15 | 14 | 9 |
| Parents located** | 642 | 116 | 63 | 34 |
| Support obligation established** | 374 | 51 | 28 | 11 |

*In thousands
** Includes non-AFDC cases

NEW YORK STATE TEMPORARY COMMISSION
TO RECODIFY THE FAMILY COURT ACT



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TRENDS IN THE ADMINISTRATION OF FAMILY LAW

October 1982

DO NOT CITE OR QUOTE

Lay Advocate Programs

A number of non-profit agencies attempt to fill some gaps in services in New York. They are FOCUS (For Our Children and Us), SPLIT (Separated Persons Living in Transition), and the Victims Services Agency.

FOCUS provides paralegal services on matters of child and spouse support. Its principal reason for existence is "to facilitate the enforcement of court-awarded support, to avoid the experience of women and their children having to sustain themselves on public assistance rolls and placing the burden on the taxpayer."53

FOCUS's rationale for existence sounds similar to those expressed in Michigan in support of the Friend's system:

> A primary need of our clients is to attempt to acquire spouse or child support and/or to enforce the support provison of a divorce decree. Because they have exhausted their resources or do not possess the resources to engage a private attorney, and because free legal services are unavailable to them on support matters, we are their last resort.

FOCUS's paralegals counsel clients on family court procedure and act as advocates in court, to both file petitions and to appear as a "friend" at hearings. The paralegals go to family court on issues of support, custody, visitation, and family offenses as well as

53. FOCUS, 1982 Annual Report, p. 2.

enforcement of court-ordered support. A panel of volunteer attorneys provides guidance to the paralegal staff.

Their experiences can be summarized as follows:

- Of the 1,958 clients seen in 1981-82, 31% were married, 36% separated, 30% divorced, and 4% unmarried (only 9% were men).
- The income levels of the wives were substantially lower than the husbands. A large number of clients were seeking enforcement of family court support orders or divorce judgments.
- Many of the clients were unaware of their rights before coming to FOCUS, even if they already filed petitions in family court.
- In family court, they encountered long delays (of up to six months), forgiveness of arrears, denial of access by probation and incorrect information, unexecuted warrants; dual orders of protection, problems around the division of support between AFDC and private, DSS personnel misinforming recipients concerning support, and a general lack of public information.[54] (Attached as Appendix B is a copy of recommendations made by FOCUS in its 1982 Annual Report.)

56. Although we do not have statistics as to the dual use of Family Court and Supreme Court, the experience of FOCUS suggests that as many as 95% of petitioners in Family Court have been divorced or will be seeking divorces in the future in Supreme Court.

C 2

# The Poor Among Us

FOCUS

## Poverty and Divorce

By Marilyn Goldstein

NEWSDAY
December 13, 1982

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About 10 years ago, when a group of divorced and separated Long Island women picketed the Family Courts, claiming their husbands had routinely ignored orders to support their families, the women were hooted and jeered by passersby.

When they complained to legislators, they were greeted with condescension and disbelief. Their friends and families believed them, but considered the cases unique.

"The concept then was that men were getting stuck; women were alimony drones," said Fran Mattera, recalling the early years of a group she founded with other pickeers called FOCUS, For Our Children and Us.

A decade and many studies and surveys later, statistical evidence has backed up the contentions of FOCUS that divorced, separated and abandoned women end up impoverished because support awards are unrealistically low and often never made or never paid, because it takes months to move cases through the courts and because proving a man's financial worth is often difficult. Now, when FOCUS talks, people listen.

The 1980 U.S. Census was only the latest national study to confirm the relationship of broken marriages and abandonment to poverty. According to the census, there are 13,174 female-headed households with children in poverty on Long Island, a 68 per cent increase from the 1970 figure of 7,835. Although the percentage remains nearly the same as that of a decade ago, because divorce has increased astronomically, the numbers of poor women affected by it surged. Almost one out of every three female-headed households with children was in poverty in 1980, according to the census. In urban areas, a large part of that group is made up of women with children who were never married. But on Long Island, the bulk of such women are divorced.

The census results paralleled those of federal statistics released in 1978, during the International Women's Year. The figures showed that only 14 per cent of divorced women are ever awarded alimony and of those, only 45 per cent get their payment with any degree of regularity. Only 45 per cent of divorcing mothers are awarded child support, and less than half receive it regularly.

The biggest jolt to the bureaucrats was that large numbers of formerly middle-class and upper-class families had been inducted into the female poverty corps. Their economic situation is not always ameliorated when they get jobs because of the low wages earned by women, according to experts. Phyllis Borger, director of Displaced Homemakers in Levittown, said, "Women heads of household are poor even when they do get jobs. They start at the lowest salary while their ex-spouses have 20, 30 years worth of seniority, job skills and contacts."

A 10-year study by a Stanford University research team found that after divorce, the income of women and their children declines steeply. Interviews with more than 200 attorneys and judges and 238 recently divorced men and women showed that wives of men who earned more than $30,000 a year averaged an income of $12,000 after the divorce. Many, the study said, were surprised to find themselves below the poverty level.

In some cases, it is a matter of economics. There just is not enough salary to support two households above poverty. In others, it is a matter of cases getting tied up in the courts. Matters puts much of the blame on the court, which she says still frequently forgives arrears when a husband finally appears in court, allows adjournments that are stalling tactics and awards women inadequate sums.

William J. Dempsey, administrative judge of Nassau County Family Court, said the courts do the best possible given "the court overload and the need for due process." In 1981, 1,335 support petitions were filed in Nassau County Family Court and 2,230 in Suffolk.

"The majority of cases are disposed of in timely fashion," Dempsey said. But he said that determining assets can be difficult and time-consuming, particularly when a husband is self-employed.

Some progress has been made. In New York, courts can now automatically garnishee wages when a husband violates support orders, deduct arrears from income tax refunds, locate run-away husbands, and sometimes provide a destitute woman with a lawyer.

On the other hand, the so-called equitable divorce law, which became effective July, 1980, has gotten mixed reviews. It allows a judge to distribute assets to both parties even if they were in the husband's name, although not necessarily equally. The law also eliminated alimony and awarded women maintenence, usually for a limited period of time.

Stephen Gassman, former chairman of the Matrimonial and Family Law committee of the Nassau County Bar Association, said "The law says the maintenance period can be given for an indefinite period. Too often it is assumed by the courts that it should be for a definite period . . . Where you have a dependent spouse that has no marketable skills, the maintenance should be for an indefinite period."

Mineola lawyer Lois Ullman, a family law specialist, said, the law works in cases "where there were substantial assets and they were all in the husband's name. The woman doesn't get half, but at least she gets something." Where assets are in both names, "women aren't getting anything like half. I believe it's because the judge still looks at it as the husband's money, the husband's property, the husband's business. Marriage is still not looked at as a partnership."

Women's groups are springing up to meet the needs of the growing number of divorced women in financial straits. One, Displaced Homemakers, offers divorced and separated middle-aged women a seven-week program of individual counseling, workshops in employment and employment counseling. But even its successes are limited.

Barbara, 43, a mother of two hadn't been employed for 20 years when her husband left 18 months ago. She took the Displaced Homemaker's course and got a $10,000-a-year job with a social service agency. With all that, she and her children live just above the poverty level. "I'm proud of myself having come so far in a year and a half," she said. "But where do I go from here? I'm 43 and just starting out."

Last year, FOCUS served 1,955 clients in Nassau, Suffolk and its recently opened Queens office. The group advises clients in dealing with the courts and social service agencies in cases involving nonpayment of support orders, child-support awards and custody cases.

Mattera, who was abandoned 15 years ago and had to live on welfare for a while, said, "We have had some new laws, the public is becoming aware of the fact there is a problem collecting child support. But we still have a long way to go . . ."

NEWSDAY, SUNDAY, OCTOBER 26, 1980

# Study Finds Poverty in Divorce

## Census report says many mothers' living standards fall after separation, divorce

By Henry Spatzer and Lawrence C. Levy

Barbara Simpson was 20 years old when she got married in 1976. But she says that her husband began "seeing another girl," and after attempts to work out their differences failed, they got divorced in March.

She said she asked for no alimony and hastily accepted only $200 a month offered by his lawyer to support the children, ages 3 and 1 "because I wanted to get as far away as I could—and fast."

Then she went on welfare.

"It was kind of hard to live on $200 a month," she explained. "I couldn't get a job because I didn't want to leave the kids alone . . . I had to move in with my parents, which is hard on them. I'm too old to have them feeding and clothing me and my kids. I didn't have money to do anything else."

And in July the $200 a month stopped coming. Her husband, a soldier who was transfered to Germany at his own request, claims she didn't let him see the two boys enough when he was home on leave this summer. He has since promised to resume the payments.

According to a U.S. Census Bureau study to be released today, Ms. Simpson is among millions of divorced or separated American mothers whose standard of living has been sharply lowered after divorce or separation.

While the study, based primarily on 1978 data, did not include information on the economic levels of the husbands, it is considered by demographic experts to be the one of the first major economic portraits of families headed by divorced or separated women.

The study found that of 7.1 million divorced or separated mothers in the United States in 1978, 4.2 million had agreements for alimony or child support. But the picture for them is dismal:

- Getting the money from ex-husbands often is a problem. Of the 3.6 million women with voluntary or court-ordered agreements for receiving support payments in 1978, 1.2 million or one-third were paid less than they were supposed to—many of them got nothing at all. (About 600,000 other women who didn't get paid had agreed to some form of deferment until the following year.)
- Of those with support agreements, 17 per cent or 1.2 million were living below the poverty level or earned less than $6,600. The study did not say how many of them had lived at poverty level before their divorce. In 1979, 2 million divorced mothers were below the poverty level.
- In 1978, child support or alimony was about 20 per cent of the average income of $9,000 for all divorced mothers and one-third of the income of poverty level mothers. The crunch is worse for black women, who received one-third less in payments than white women.
- And as far as getting relief in the courts, the report found, "a court order did not seem to be an effective method of ensuring full payment since only three-eighths of the women with court ordered payments received the full amount, and about the same proportion recieved no payment at all." Women supposed to receive support under a voluntary agreement "fared better than women awarded payments by the court." Matrimonial lawyers, counselors and others familiar with the problem blame the poor economy for the large numbers of husbands not paying support or alimony. Some blame it on revenge or vindictiveness. "A man [feels] hurt or may be he's angry at the settlement or his wife, so what does he do?" said a counselor with the Nassau County Department of Social Services. "He rebels. He says, 'to hell with them. Let 'em sweat for it.'"

And some blame judges for being too lenient with ex-husbands who lag behind in payments. They believe that judges are too hesistant to hold a man in contempt of court. Others, however, argue that a contempt decree doesn't necessarily put money in the hands of the woman and might make collection harder.

And some women who don't have child support agreements do not seek them. "In many cases there is too much animosity" between the spouses, said Sidney Siben, a matrimonial lawyer from Suffolk. Attorney Lillian Bader added: "They want the man completely out of their life and their children's." And, said Gerald Friedman, some women feel they can't afford counsel or don't want to confront their husbands—persons who may have dominated and controlled their lives for years.

Debra Recine, who lives in Suffolk, said she doesn't need the census bureau or experts to tell her about the economic impact of a broken marriage. "I went from married, pregnant and working—to separated, pregnant and on welfare," said Ms. Recine, who was married in 1976 and separated two years later while she was pregnant with her son.

Her separation agreement called for her to receive $60 a week in child support. According to FOCUS, a private bicounty agency that helps people with divorce, alimony and child support problems, Recine appealed to that agency when her husband didn't pay. Recine said she couldn't afford a lawyer to make him pay, and she's also afraid of taking

—Continued on Page 17

# *Money Problems Found To Follow Divorces*

—Continued from Page 5

time off from her $168 a week job to go to court. She said the support payments would mean not having to live with her mother as she is now or in the mice- and roach-infested apartment above a store in Babylon that she recently abandoned.

Matrimonial lawyers, counselors, social service agencies and other experts on Long Island say the census bureau figures reflect their own experiences.

Jim Barlow, director of the Nassau County Social Service Department's office of child support enforcement, said that about 40 per cent of the 11,000 women the office handled this year are receiving some form of welfare. Figures from Suffolk County and Queens are much the same.

In 1978, the year the census study drew upon, about 25 per cent of the 525 women who went to FOCUS had difficulty getting payments for themselves and their children. FOCUS ("For Our Children and Us") found that more than 75 per cent of the total had incomes below $10,000, that most had been housekeepers for 10 to 20 years and had never worked and that most of the husbands earned more than $15,000.

The situation on Long Island hasn't changed much since.

Last month, FOCUS saw 71 divorced or separated women, who had a total of 110 children, and 29 of the women, or 40 per cent, needed help in getting payments from their husbands and said they could no longer afford a private attorney. Only one woman had an income over $15,000 and about 25 of them had incomes below $10,000, including 14 women who earned less than $5,000. Half of the women had been married more than 10 years (one-sixth had been married more than 25 years). Half gave their occupation as housewife, while one-fourth were secretaries or clerks.

Meanwhile, two-thirds of their ex-husbands had incomes of $20,000 or more. A third were professionals, skilled technicians or owned a business; half were service or blue-collar workers.

"Many times they're [divorced] from a professional or highly paid technician and they're not getting enough money to run the household," said Fran Matters, FOCUS' founder and director.

Chris Akin, who handles FOCUS cases in Suffolk, said: "It's not even a matter of 'the style to which you're accustomed.' When they get jobs the [salary] is so low that it's not even enough to subsist on."

"I was left with a beautiful home with a pool," said Evelyn Pike, 50, who was divorced from her doctor husband four years ago after a 25-year marriage. "But I can't eat the pool or the bricks in the house." She said her husband, whom she said she put through medical school, moved in with a female patient and despite repeated court judgments against him frequently missed the monthly $250 payments. "I was on food stamps for 10 months. LILCO threatened to cut me off. He stopped paying the mortgage, and the bank threatened to foreclose." Luckily, the threat was never carried out.

Newsday Photo by Dan Goodrich

Evelyn Pike in her living-room

States don't have reciprocal enforcement agreements in alimony cases, and although there are federal laws that apply for child support, getting a judgment often takes 6 to 8 months. Then there's the time and expense of traveling back and forth to out-of-state courts.

Local court appearances create enough problems for women who are "trying to put their lives together, Matters said. "When she finally finds a job and then has to take off for filing [court records], for hearings and adjournments—well, after two or three times the employer says, 'sorry, I need somebody dependable,' and she's back where she started."

"They'll tell you, 'you have too many personal problems,'" added Toby Wasserman, FOCUS coordinator for Nassau. "And sometimes when you get a job [the ex-husband] goes into court to try to cut off your payments."

FOCUS

FOR OUR CHILDREN AND US Inc

## PURPOSE:

To provide paralegal services to individuals in matters of divorce, separation, custody, visitation, enforcement of court-awarded child support, alimony/maintenance and related legal information under the guidance of a panel of volunteer attorneys.

## SERVICES INCLUDE:

### COURT ADVOCACY

Paralegals accompany clients to Family Court and acquaint them with the procedures. Paralegals assist the clients in filing petitions and also on the hearing date(s). These advocates inform clients of their rights under the law and how to insure enforcement of the laws, ie: how to apply for a wage deduction order, serve supoenas or secure a judgement on the arrears.

### PANELS & WORKSHOPS

Panels and workshops are held several times a year. Legislators, judges and attorneys participate.

### MINI-MEETINGS

Mini-meetings are held at various locations in Nassau, Suffolk and Queens. An attorney is present to answer legal questions relating to matrimonial situations.

### NEWSLETTER

Published bi-monthly, the newsletter informs and educates the community on Family Court procedures, legislation and news of general interest. Articles are written by members of the staff, guest attorneys and concerned citizens of the community.

### INFORMATION & REFERRAL

Clients are informed of their rights and are referred to attorneys or appropriate community agencies or resources.



## HISTORY

FOCUS,
"For Our Children and Us,", Inc. is an innovative program and the only one of its kind on Long Island and in the nation.

In 1972, Fran Mattera brought together a group of attorneys, social workers and community leaders who were committed to the enforcement of court-awarded support through Family Court. An educational program was instituted which seeks to inform the average citizen of his rights and options under the matrimonial and family laws of New York State.

In 1978, FOCUS, "For Our Children and Us", Inc. was incorporated as a non-profit agency under the laws of New York State. At this time, paralegals were added to the staff to give assistance to clients confronting the complexities of the Family Court system.

FOCUS now maintains offices in Nassau, Suffolk and Queens Counties. Although the major source of funding comes from New York State, FOCUS also relies heavily on the in-kind services of professional volunteers and on the generous contributions of clients and friends.

FOCUS NEWSLETTER

550 Old Country Road
Hicksville New York 11801
516) 433-9633

"FOR OUR CHILDREN AND US", INC. September-October 1984 VOLUME 6 NUMBER 5

PRESIDENTS MESSAGE:

This has been a very busy and rewarding time for me. On July 14, I testified at a hearing on Child Support held by the Hon. Harold Ford (D. Tenn) Chairman of the Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means U.S. House of Representatives. On July 20th Channel 21 presented a "Speak Out" program devoted to Child Support on which I appeared as a panelist.

This summer we were fortunate to have Jeanine Rayano a student at Touro Law School in Huntington intern at our office in Suffolk County. She was a pleasant, bright and caring person. We wish her a successful law career.

We at Focus have been working on the September 25th Reception which we hope you all support and attend. If you haven't made reservations, please do it now. A special afternoon has been planned for your pleasure. Bring friends and relatives. We look forward to meeting and greeting you. It's the people who make the party. We're depending on you.

We received a proclamation from Governor Mario Cuomo declaring August, "Child Support Enforcement Month." The governors of Virginia and Maryland made similar proclamations.

I was truly delighted when I learned that President Ronald Reagan also declared August, "Child Support Enforcement Month." In his State of the Union Message he said "We intend to strengthen enforcement of child support laws to insure that single parents with custody most of whom are women do not suffer unfair hardships." We've come a long way in achieving national recognition of the importance of child support. We've go a long way to go in reducing the number of fathers who default on their child support. The latest figures indicate that 75% default.

The judges and personnel at family court have given FOCUS "For Our Children and Us" Inc. recognition for the effectiveness of its services in the courts. We find this most gratifying.

The seminar at Newsday October 13 will be very illuminating. Early reservations are advised. Seating is limited and reservations will be honored in the order in which they are received. Our speakers and panel are impressive and well informed. Your lively questions will add much to the success of the seminar. The program on the following page lists speakers and panelists.

FLASH: Clients wanted to testify at hearing by Congressman Mario Biaggi in N.Y.C. Sept. 12th. If your husband is self-employed and hiding assets - contact F O C U S at 516-433-6611.

To our Lewis friends, A Happy New Year.

Fran

## SEPARATION AGREEMENTS AND SMALL CLAIMS COURT

by Carol Ingarra, Staff Paralegal

If you are presently living under the terms of a separation agreement and are not receiving the dollar amount specified as child support and/or maintenance, legal recourse (with minimal fees) is available. Although the agreement is not enforceable in Family Court as a contract, any violation of the terms of that separation agreement constitutes a "breach of contract". A legal suit may be brought in Small Claims Court for arrears not exceeding $1500.00. It is not necessary to retain an attorney to commence a small claims action but no one is barred from doing so. But lined below are the steps to take to bring on a small claims action.

a) Go to the small claims court nearest you. Present names, addresses and a statement of the complaint.

b) A $3.00 filing fee must be paid to the clerk, plus postage for sending the summons to the defendant (the person being sued) by certified mail.

c) The clerk will schedule a trial date and the summons will be mailed to the defendant (either at his place of residence or business within the county) If mail service is not completed, the court informs the plaintiff (the person filing the action) and schedules a new trial date. Plaintiff must then arrange for personal service of the summons. Any person over the age of eighteen, not a party to the action, may serve a summons. This service must be made in order to proceed to trial.

If the defendant fails to appear at the time of the trial and a notarized affidavit of service is presented, the trial will proceed. An inquest(a hearing minus one of the parties)will be held and a default judgment will be granted by the Judge. If both parties appear, the plaintiff will present her case by giving sworn testimony and by calling any witnesses she wishes. A copy of the separation agreement (or contract) should be submitted as evidence at that time. The defendant then presents his case and the same rules apply.

At the end of the trial, the judge renders his/her decision.

1) He may award a judgment in favor of the plaintiff in a specific amount of money.

2) He may find in favor of the defendant and dismiss plaintiff's claim. The court notifies both parties of its decision.

Once the judgment is granted, and no money is received,contact the defendant. If you suspect that you may never by willingly paid, you may take steps to have his assets seized by executing the judgment.

## EXECUTIONS

An execution is a legal document which authorizes the sheriff to collect the amount of the judgment. To obtain an execution, request the court to issue a transcript of judgment($2.00 fee). In addition to the judgment, a Blumberg "X-120" form must be purchased at any legal stationery supply store. Complete the X-120 form. Make four copies of the judgment, and file these documents with the County Clerk's Office. Bring all papers to the County Sheriff's office for execution. Executions can be implemented against all properties, including bank accounts. The Sheriff's Department will inform you of all fee schedules (mileage, towing, storage etc.) incurred.

Recent evidence suggest that lack of child support is a major factor determining welfare recipiency in single parent families. The possibility of attaining some measures of success from the Child Support Enforcement effort is significant to society's prospects of containing the expansion of welfare rolls.

The 1970 census figures showed 8,265,500 children living with one parent. By 1980, the figure has grown to 12,163,600 nearly a 50% increase.

In 1956 the total cash benefits expended to assist children was just over $617 million. By 1982 that figure increased to $12 billion annually- a 2000 percent increase in 22 years.

Additionally, billions of dollars were spent on food stamps, medical benefits, and other related programs.

A study presented to the Senate Finance Committee by M. Winston and T. Forsher, "Non-Support of Legitimate Children by Affluent Fathers as a Cause of Poverty and Welfare Dependence", stated that non-support of legitimate children by affluent fathers was often a cause of poverty and welfare dependence.

Another conclusion in the study was that attorneys and public officials found child support issues boring and in some instances even hostile to the concept of fathers being responsible for their children.

FOCUS

'For Our Children and Us', Inc.

in cooperation with

NEWSDAY

Presents a seminar

## WHO IS SUPPORTING THE CHILDREN?

'Everybody's Problem'

DATE: Thursday, Oct. 13,1983

TIME: 8:30 A.M. - 1:00 P.M.

PLACE: Newsday Auditorium
Pinelawn Road
Melville, New York 11747

Continental Breakfast - 8:30 A.M.

Reservations are limited on a first received basis.

R.S.V.P. Today
Fran Mattera
(516) 433-6633

This seminar is offered free through the generosity of Newsday.

61

75% of all fathers default on court awarded child support.We will explore how to enforce the existing child support laws more effectively

Non-payment of child support is a burden on the Federal Government as well as the states.

Of the 4 million women awarded child support payments in 1982 only 1,900,000 received the full amount; 1,000,000 received partial payment; and 1,100,000 received no payment at all.

It is estimated that 40% of the 8,400,000 households in the U.S with absent parents do not have the court orders for child support they need to collect payments; and the non-payment of court ordered child support undermines people's confidence in the law, and it is important the responsibility for these dependent children be shifted from the Federal Government to the absent parent.

In 1982, the office of Child Support Enforcement was able to collect only 10% of the aid to families with dependent children case load of 5,500,000 and in only 30.6% of the non-aid to families with dependent children caseload of 1,500,000.

PROGRAM

8:30 Continental Breakfast
The program will start promptly at 9 am

| | |
|---|---|
| WELCOME: | SAM RUINSKY<br>Director of Communications<br>Newsday |
| MODERATOR: | FRAN MATTERA<br>Pres. & Founder of FOCUS<br>'For Our Children and Us' |
| SPEAKERS: | MARIO BIAGGI<br>United States Congressman |
| | JOHN R. DUNNE<br>New York State Senator |
| PANELISTS: | JOSEPH D'ELIA<br>Comm. Nassau County Dept.<br>of Social Services |
| | ELEANOR LUSTIG<br>Pres. League of Women Voters |
| | PHYLLIS BORGER<br>Dir. Displaced Homemakers |
| | JOHN SULLIVAN<br>Director Catholic Charities |
| | DELORES SELIGMAN<br>Pres. Nassau/Suffolk Women's Bar Association |
| | CLIENT |
| | STEPHEN GASSMAN<br>Nassau Bar Association |

COFFEE BREAK - QUESTIONS AND ANSWERS

REGISTRATION FORM

SEMINAR CO-SPONSORED BY 'FOCUS' AND NEWSDAY, THURSDAY, OCT. 13,1983

NAME:_____

ORGANIZATION:_____

ADDRESS:_____

CITY:_____ STATE:_____ ZIP:_____

## NEW FEDERAL CHILD SUPPORT ENFORCEMENT LEGISLATION PROPOSED IN CONGRESS

by Toby Wasserman, Queens Coordinator

Two new bills on the Federal level, dealing with the improvement of the methods of enforcement of child support payments have been proposed in the United States House of Representatives.

The first, H.R. 2374 is titled the "Child Support Enforcement Improvement Act of 1983." Its purpose is to assure compliance with child support obligations. Basically, it amends already existing laws. It does establish a federal clearing house for keeping records of payment and non-payment of court awardedchild support with power to inform the appropiate enforcement agencies so that the necessary action may be taken. Another completely new section is one compelling the state to seek medical support for children for whom it seeks financial support from an absent parent to whom medical insurance is available. The bill further provides for mandatory wage deductions after two months of non-compliance, and establishes means of attaching property, wages, tax refund checks to collect past due support.

The second bill, H.R. 1014, introduced by Congressman Mario Biaggi of New York, states that its purpose is to "develop effective ways of improving federal and state governmental efforts to enforce child support obligations and recoup delinquent child support payments." As indicated in the section of the bill called "Findings and Purpose", almost 8½ million women with dependent children are affected by the non payment of court ordered and voluntary child support and that non-compliance exceeds 50%. In addition, 87% of the children receiving benefits under AFDC (Aid to Families with Dependent Children) are eligible for those benefits due to an absent parent who provides, at most, inadequate support. The offic[illegible] Child Support Enforcement in fiscal year 1982 was able to collect payme.. in only 10% of AFDC families and in only 30% of non AFDC case.. The bill stresses the importance of shifting responsibility for dependent children from government to the absent, obligated parent.

Accordingly, the bill establishes a bi-partisan commission to be called the National Commission on Improved Child Support Enforcement. It is to conduct a study and investigation of the factors contributing to the high rate of non payment of child support and those factors preventing effective enforcement. The commission will study the federal and state roles in the collection of child support with a goal toward establishing a national formula for assesing the amount of a support order and a federally based wage system to deduct child from wages and increase collections. Within one year after the date of enactment of this bill, the commission will present a report of its findings and recommendations to the President of the United States.

For further information on these proposed federal bills, consult your local library.

FOCUS urges you to write to your congressman in support of these bills, so that he may legitimately endorse and vote for them with the backing of his constituency.

## 'ROUGH ROAD REMAINS FOR WOMEN'S EQUAL RIGHTS'

by Delores Seligman, Pres. Nassau-Suffolk Women's Bar Assoc.

(Reprinted from New York Law Journal, Monday, May 2, 1983)

Law Day is a time to celebrate the American Judicial System. It is also a time to reflect upon it, and although I do not wish to appear as a malcontent, for I truly revere and venerate the supremacy of the law, my reflection on this day as it is on everyday, is that the law has been unneccessarily cruel to women.

It has been cruel to her in the marketplace; it has been cruel in education; it has been cruel concerning rape and domestic violence, and it has been, and continues to be most cruel in regard to the one function Justice Bradley would have had her created for, that is, as homemaker and wife.

Of course, we can explain why this is so; we all know the story. We inherited the common law with all of its "imperfections on its head" and under the common law, the existence of a married woman was suspended or "at least is incorporated and consolidated into that of the husband; under whose wing, protection and cover she performs everything." In other words, the old "the -husband-and-wife-are-one" routine, and the"one"is the husband. Yes, it is easy enough to identify the legacy; the problem is to disencumber ourselves from its bondage.

Unquestionably, there has been much progress in the role of women in our society. Several months ago, Attorney General Robert Abrams conducted a work-shop and published a manual that summarized the rights of women in New York in the areas of employment,housing, health care, credit, public accommodations, and education. The number of rights listed in the sixteen page manual is quite impressive. Surely, there have been significant gains, and we have all helped to achieve them.

Riane Tennenhaus Eisler, in her book entitled Dissolution , has pointed out that in the past when women have made significant gains during periods of social ferment,they have lost them after "things settled back to normal." I sincerely doubt that things will ever settle back to normal to that extent; none of us will ever tolerate the incredible outrageous discrimination of the past.

In the not so distant past, women could not own property, contract, practice law, or even have access to the courts and it wasn't until after, by Carrie Chapman Catt's (1859-1947) calculations, 52 years of campaigning, 56 referanda to male voters, 480 efforts to get state legislatures to submit suffrage amendments, 277 campaigns to get state party conventions to include women's sufferage planks, 47 campaigns to get state constitutional conventions to write women's sufferate into state constitutions, 30 campaigns to get presidential party conventions to adopt women's suffrage planks into party platforms and 19 successive Congresses that women won the right to vote. Surely there are millions of women alive today who remember August 26, 1920 when the last state, Tennessee,ratified the Nineteenth Amendment.

Several years after the Nineteenth Amendment was ratified, Carrie Chapman Catt wrote, " It is doubtful if any man. . . ever realized what the suffrage struggle came to mean to women. . . How much of time and patience, how much of work, energy aspiration, how much faith, how much hope, how much despair went into it. It leaves its mark on one, such a struggle."

We women lawyers are proud of that struggle; we are proud of all the achievements of the past; we are proud of our own achievements; we cite our growing numbers as proof of our advancement; we cite our eagerness for personal and professional advancement; we cite our networks.

(Continued on next page)

## CALENDAR OF EVENTS

All sessions are from 8-10 P.M. and will be held at various locations. For specifics on a location, please call the phone number listed below for the date and pertinent information or call the FOCUS office at (516) 433-6633, (516) 979-0005 or (212) 697-7800.

| | | | | |
|---|---|---|---|---|
| Tuesday | September 13 | Freeport | Virginia | 378-3960) |
| Monday | September 19 | Glen Oaks | Helen | 352-8487 |
| Wednesday | September 21 | Holbrook | Susan | 585-0713 |
| Tuesday | September 27 | Franklin Square | Debbie | 872-4437 |
| Wednesday | October 12 | Island Park | Gloria | 432-6230 |
| Monday | October 17 | Bayside | Monica | 631-0190 |
| Wednesday | October 19 | E. Northport | Marianne | 368-7274 |
| Tuesday | October 25 | Plainedge | Pat | 796-5761 |

An attorney will be present to answer any legal questions regarding separation, divorce alimony, child support, visitation and custody. We strongly suggest that those interested, come prepared with written questions!

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Continued:

But with all of our own personal achievements and with all the advancements in our laws for women, we have now entered into a most distressing era, the era of the displaced homemaker - the woman who has been cast off (sometimes by her own initiation) without any marketable skills, without a short term "rehabilitative" maintenance. The instant poor.

These are the women who Judges are said to merely "viewing under the present Equitable Distribution Law as independant people, as the women's movement has asked, and are treating them as such." Sally Feldman NYLJ 4-18-83

Women are now finding themselves in the anomalous situation of being punished for being part of the woman's movement, "regardless of whether they participated in it or not." Those who are liberated to the extent that they are sharing a bed and board without the benefit of clergy, find upon dissolution of the relationship, very little relief from the courts since back to the old common law they go, citing away about the law not implying (Marvin V. Marvin notwithstanding) a promise on the part of the man to pay for the services rendered by women during a "metricious" relationship, unless, of course, there was sufficient evidence of expectation and intention of payment to constitute a contract in fact. These women do not even have the benefit of the imperfect Equitable Distribution Law which at least allows for the apportioning of "marital" property.

Thus, in reflecting on the law on the [illegible] Law Day, I do not find it easy to become complacent with our own trappings of success, and the oft-repeated stories of our own struggles and achievements. We have a long way to go. My great fear is that we are being superimposed on or integrated into a legalsystem which continues to be anti-woman and that we are unwittingly perpetuating it.

Fisler says, "We can no longer make minor changes by tacking on small improvements to the existing patriarchal system. It is of course, a time of crisis, but it is also a time of opportunity: of opportunity for both women and men to join together and invent a better, more human future for us all."

HAVE YOU SENT IN YOUR RESERVATION? DO IT TODAY!!

F O C U S 'For Our Children and Us', Inc.

FOURTH ANNUAL RECEPTION

DATE: Sunday, September 25, 1983 TIME: 4 P.M.

PLACE: V.F.W. Hall - Post #3211
320 South Broadway, Hicksville, N.Y.

PROGRAM: RAY HEATHERTON MASTER OF CEREMONIES
LUCILLE BUSH VOCALIST

DONATION: $10.00 per person (tax deductible)

This is an opportunity to meet/greet old friends. Make new acquaintances. Mail your reservation, bring a friend or come by yourself. You will enjoy!

MUSIC * REFRESHMENTS * DANCING

---

I will attend September 25,1983 reception for F O C U S, 'For Our Children and Us', Inc. Please make checks payable to F O C U S 550 Old Country Rd. Hicksville, N.Y. 11801 in the amount of $10.00 per person.

Although I am unable to attend, I am happy to enclose a donation.

NAME: _____

ADDRESS: _____

F O C U S, 'FOR OUR CHILDREN AND US,' INC.
550 OLD COUNTRY RD.
HICKSVILLE, N.Y. 11801

NON-PROFIT ORG.
U. S. POSTAGE
PAID
Hicksville, N.Y. 11802
Permit No. 648

DATED MATERIAL
PLEASE RUSH!

Ms. ROUKEMA. Ms. Mattera, I thank you for your testimony. It is somewhat similar to the testimony presented by FOCUS before the Ways and Means Committee, and I am familiar with that testimony and most appreciative. It is useful testimony. Many of your suggestions are incorporated in one form or another in a number of bills.

I would just like to ask that your organization considers endorsing H.R. 3354.

Ms. MATTERA. Yes, we do.

Ms. ROUKEMA. And I would appreciate that because it holds the essence of the proposal that you feel are essential, that are key, mandatory wage withholding and the national reciprocity system.

I am happy that you brought to my attention this banking plus system, and I think that will be useful for us to explore in committee.

I hope you understand that I have an engagement in New Jersey that would preclude extensive questioning, but we will be in touch with you and appreciate your interest and this will be inserted in the record. Thank you.

Ms. MATTERA. Thank you.

Ms. ROUKEMA. Judith Avner, attorney for the NOW legal defense fund.

## STATEMENT OF JUDITH AVNER

Ms. AVNER. Thank you, Congresswoman. We have a written statement which I believe you have.

Ms. ROUKEMA. And it will be submitted in full for the record.

Ms. AVNER. Fine. In that case, what I will do is just read some parts of it to you right now. And I also should say because of the press of other work commitments, we were not able to prepare for this hearing a detailed analysis of the different bills pending in the Congress. We do plan to submit such an analysis within the next 2 weeks and would, given your schedule and ours and the length of the hearing, we would be glad to incorporate in that written statement the answers to any questions you might have.

Ms. ROUKEMA. Thank you. I would appreciate that. We will submit those questions. And we will look forward to your analysis for committee review?

Ms. AVNER. Yes.

Ms. ROUKEMA. Thank you.

[Prepared statement of Judith Avner follows:]

PREPARED STATEMENT OF JUDITH I. AVNER, STAFF ATTORNEY NOW LDEF, NATIONAL ORGANIZATION FOR WOMEN LEGAL DEFENSE AND EDUCATION FUND AND THE NATIONAL CENTER ON WOMEN AND FAMILY LAW, NEW YORK CITY

CHILD SUPPORT TESTIMONY

Good morning. My name is Judith Avner and I am an attorney with the National Organization for Women Legal Defense and Education Fund. I am pleased to appear before you this morning on behalf of the Fund and the National Center on Women and Family Law to discuss the very serious problem of enforcement of child support orders. The NOW Legal Defense and Education Fund is a non-profit tax exempt civil rights organization dedicated to challenging sex discrimination and securing equal rights for women and men. Formed in 1970 by leaders of the National Organization for Women—a national membership organization of more than 200,000 women and men in over 725 chapters throughout the country—to provide education-

al and litigating resources for the women's movement, the LDEF has long been concerned with the deteriorating financial plight of women, especially women and their children after divorce.

The National Center on Women and Family Law, Inc., is a not-for-profit organization incorporated under the laws of New York State for the purpose of litigating and providing technical assistance on behalf of poor women in the area of family law. NCOWFL is funded by the Legal Services Corporation to serve as a national support center on poor women's issues and family law issues. NCOWFL provides "back up" support to local legal services programs and advocates in every state. NCOWFL sponsors the National Child Support Enforcement Advocacy Network, comprising over 70 community groups around the country working toward the improvement of child support enforcement. In its daily work with legal services programs around the country, and through its sponsorship of the National Child Support Enforcement Advocacy Network, NCOWFL is painfully aware of the poverty of women and children caused by the failure of fathers to meet their support obligations and the failure of our judicial system to treat these obligations seriously.

I am representing these groups because of our overriding concern for the growing poverty among women and children and the impact of divorce on their economic status. The current child support system, with its low awards and inadequate enforcement procedures and remedies, significantly contributes to the massive shift of woman-headed households into poverty. Every day our organizations receive telephone calls and letters from women across the country describing a multitude of serious problems involving inadequate child support awards and enforcement and begging us for help. But we can provide help in only a limited number of cases. The systemic problems we cannot solve alone.

Congressman Biaggi, we applaud your interest in this critically important issue and your concern for the plight of women and children whose economic survival is inextricably intertwined with an award of adequate child support and enforcement of the order. We gladly join in your inquiry and commitment to remedying this national disgrace and assuring an adequate standard of living for divorced women and their children.

We speak at a time when the National Advisory Council on Economic Opportunity has declared that the "feminization of poverty has become one of the most compelling social facts of the decade."[1] The Advisory Council has estimated that if current trends continue, the poverty population by the year 2000—only 17 years from now—will be comprised of women and children exclusively.[2]

The relationship between divorce and poverty among women and children has been made alarmingly clear—one year after divorce, a woman's standard of living plummets by 73 percent while a man's standard of living actually increases by 42 percent.[3] The deteriorated economic position of divorced women has a profound and direct impact on their children. From 1970 to 1981, the number of divorces in this country doubled.[4] Over the same eleven year period, the number of children living with one parent increased by 54 percent, to a total of 12.6 million children, or one child in five.[5] In 1978, 7.1 million women in this country were single mothers living with their children,[6] more than 90 percent of all children who live with one parent live with their mother.[7] (For this reason, I will refer to custodial parents as "mothers.") And the vast majority of these children have a living noncustodial parent from whom they are entitled to receive support payments. Yet, the appalling truth

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[1] National Advisory Council on Economic Opportunity, "Critical Choices for the 80's" (1 August 1980).

[2] Id

[3] Weitzman, "The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Support Awards," 28 U.C.L.A. L. Rev. 1181, (1987) (hereinafter referred to as Weitzman)

[4] Hunter, "Child Support Law and Policy: The Systematic Imposition of Costs on Women," 6 Harvard Women's Law Journal 1 (1983) (hereinafter referred to as Child Support Law and Policy) The Census Bureau has predicted that it is likely that 40 percent of all marriages will end in divorce. U.S. Dept. of Commerce, Bureau of the Census, "Divorce, Custody, and Child Support" (1979).

[5] U.S. Dept. of Commerce, Bureau of the Census, "Marital Status and Living Arrangements: March 1981" 1, 5 (Table D) (1982) (hereinafter referred to as "Marital Status and Living Arrangements").

[6] U.S. Dept. of Commerce, Bureau of the Census, "Child Support and Alimony: 1978" 1 (1981) (hereinafter referred to as "Child Support and Alimony").

[7] "Marital Status and Living Arrangements" at 1

is that 41 percent of all custodial mothers are awarded no child support from the father.[8]

But an award of child support is only a small road block in the seemingly inevitable downward spiral to poverty—when awarded, the amount is inevitably inadequate and rarely collected. In 1978, for example, only one-half of those mothers actually awarded child support received the full amount awarded.[9] Among all women who received some payment, the mean annual amount received was $1,800 ($150 monthly).[10] Child support represented roughly one-fifth of the mean total annual income of $8,944.[11] Needless to say, the burden of filling the gap between the support payment and the necessary cost of meeting the child's needs falls on the mother. This imposition is exacerbated by persistent sex-discrimination in the paid workforce, which reduces the mother's earning power, especially as compared with that of the absent father.

Contrary to popular belief, mothers receiving public assistance contribute more to the support of their children from their own employment earnings than do absent fathers. In Wisconsin, for example, mothers receiving Aid to Families of Dependent Children (AFDC) who were also employed in the paid workforce contributed $83.2 million per year to the support of their children, while all the fathers of these children contributed only $28 million per year.[12]

Also contrary to popular belief, there is little relationship between the father's ability to pay child support and either the amount of the award, or the extent of compliance with the order. For example, a study in Denver, Colorado revealed that ⅔ of the fathers were ordered to pay less support for their child(ren) than they reported spending on monthly car payments.[13] A Cleveland, Ohio study found that most ex-husbands retain 80 percent of their former personal income after divorce, even after all alimony and child support were paid.[14] And a California study of couples divorced after at least eighteen years found that the ex-husband and his new household had more than double the disposable income per person than did the ex-wife and her household, even assuming all support payments were made and taking into account the ex-husbands' new dependents.[15]

Federal involvement in the support enforcement area has resulted in some progress. In fiscal year 1980, for example, 642,000 absent parents were located, support obligations were established in more than 373,000 cases, paternity was ascertained in more than 144,000 cases, and almost $1.5 billion was collected, of which $875 million was in non-AFDC collections and $603 million was in AFDC collections.[16] However, there is clearly room for improvement. We hope that these and similar hearings, and the recent public attention focused on this critical problem, will result in much needed change.

The various bills pending in Congress propose a range of reforms. We will submit detailed comments on these proposals, including the financial and fee provisions, in the next few weeks. For the moment, however, our comments must be general in

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[8] Id. at 3. The plight of Black and Hispanic women is even more serious—71 percent of Black women and 56 percent of Hispanic women are awarded no child support. "Child Support and Alimony" at 5 (Table B).

[9] U.S. Commn. on Civil Rights, "The Equal Rights Amendment: Guaranteeing Equal Rights for Women Under the Constitution" 13, n.122 (1980).

[10] "Child Support Law and Policy" at 2, n.10.

[11] Id. Hunter points out that this amount broken down by number of children amounts to $100 for one child; $164 for two children; $210 for three children and $230 for four or more children. A smaller national study found the average annual payment actually made in 1974 was $539. J. Cassety, "Child Support and Public Policy: Securing Support from Absent Fathers" 103 (1978).

[12] See Day, J., dissenting in *Edwards* v. *Edwards*, 92 N.W. 2d 160 (1980). See also Woods, "Child Support: A National Disgrace" 1 (Nat'l Center on Women and Family Law 1983).

[13] Yee, "What Really Happens in Child Support Cases: An Empirical Study of the Establishment and Enforcement of Child Support Orders in the Denver District Courts," 57 Denver L.J. 21, 50 (1979). The General Accounting Office has found that one half of the absent fathers of children on welfare had incomes over $8,500 a year. Of those who earned $12,000 a year or more, 70 percent failed to pay any support. L. Komisar, "Down and Out in the USA," 150 (2d ed. 1977). See Summary of GAO Report at 120 Cong. Rec. 38196-98 (Dec. 4, 1974). Men with incomes of $30,000 to $50,000 have been found to be just as likely not to comply as men with incomes under $10,000. The White House, "Administration Activities on Issues of Importance to Women" 25 (Feb. 15, 1983).

[14] Sternin and Davis, "Divorce Awards and Outcomes: A Study of Pattern and Change in Cuyahoga County, Ohio, 1965-1978," 8 (1981).

[15] Weitzman and Dixon, "The Alimony Myth: Does No-Fault Divorce Make a Difference" 14 Fam. L.Q. 141, 174-75 (1980).

[16] Dept. of Health and Human Services, Office of Child Support Enforcement, 6th Annual Report to Congress.

nature, describing the types of reforms our organizations believe are necessary to reverse the current trend.

STANDARDS FOR SETTING AWARD

Even the most effective enforcement of support orders will not remedy the more basic problem of inadequate awards in the first instance. Meaningful standards for determining support awards are a prerequisite to meaningful reform. The standards that are currently in use for the amount of support to be awarded disadvantage the custodial mother by using as a starting point the minimal amount on which she and the children can subsist. Existing standards also fail to take appropriate account of the non-monetary child rearing and nurturing contributions provided by the custodial mother.

In almost all jurisdictions, the statutes typically provide simply that the judge shall award such support as is "reasonable and just." When statutes do list criteria, they often are general and amorphous. Courts have arbitrary and diverse conceptions of each of these vague standards and, in any event, they do not consistently adhere to even these general factors.[17] Our experience from reviewing actual amounts of support awarded has made clear that courts rarely have a realistic idea of the actual cost of meeting even the minimal needs of a child today and in the future. This view has been corroborated by NOW LDEF's National Judicial Education Project, which, in educating and training judges about the effect of their support awards, has uncovered similar misperceptions.

Almost all courts employ some kind of cost-sharing system which computes the costs of rearing the children. After establishing these costs, the court normally proceeds to allocate responsibility for these expenses between the parents by using a simple cost-division system, basing awards on information supplied by parents about each of their net earnings.[18] The judge will usually use this information to calculate a figure said to represent a reasonable share of child support expenses for the father to pay. Unofficially, however, many judges have adopted a "cap" on child support amounts, above which they almost never go.[19]

In jurisdictions in which tables have been adopted setting specific support amounts according to the father's income, the rationale for the suggested amounts is presumably that a certain percentage of the father's income should go to child support. Although unstated, such a system necessarily assumes an underlying fixed cost for care of the child or children. Under this system, neither the amount of costs actually needed to raise the children nor the extent of the burden placed on the custodial mother is considered.

Certainly there is no universal standard for the "cost" of rearing a child. Cost cannot be determined except by reference to the economic status of the parents. A preferable alternative to the "cost-sharing" approach is an income-sharing or equalization principle, which seeks to equalize the financial burden, so that each family member experiences roughly the same proportional change in living standards, taking into account the financial resources at the parents' disposal.[20] This would assure meeting the children's needs without imposing a disproportionate financial burden on the custodial mother.

AUTOMATIC FEDERAL WAGE ATTACHMENT OR WITHHOLDING SYSTEM

Wage assignment has been one of the most effective state law enforcement tools because control is taken out of the obligor's hands. However, if the obligor lives or works in another state the problem is more complicated. A federal enforcement statute could remedy this problem. Under such a provision the state would make the order, and then send it to Washington, D.C. with the obligor's Social Security number. The statute would impose on obligors an affirmative duty to make the attachment known to their employers insurance, pension, unemployment and workers compensation payors, an obligation that would carry over from job to job.

A similar suggestion is a federal income withholding system that would follow the parent from job to job. This would require the employer to deduct support payments from the obligor's wages, as with tax deductions, and then send the amount to the court.[21] This procedure would occur automatically without having to wait until

[17] H. Krause, *"Child Support in America: The Legal Perspective"* 4-5 (1981).
[18] Cassety, Emerging Issues in Child Support Policy and Practice, "The Parental Child Support Obligation, Research, Practice & Policy" 3 (1983).
[19] Weitzman at 1234; Yee at 30.
[20] Child Support Law and Policy at 9-13.
[21] Chambers, "Making Fathers Pay: The Enforcement of Child Support" (1979).

there is a violation of a support order. An experimental program along these lines is about to be instituted in ten cou ties in Wisconsin.[22] These proposals represent a potential solution to the problem of interstate enforcement and to delays and irregularities in payment. In addition, similar procedures must be developed for withholding or attaching funds derived from income other than wages.

### AUTOMATIC COST OF LIVING ADJUSTMENTS

For most families, because initially low support awards are never adjusted throughout the child's minority, they utterly fail to keep pace with inflation and the escalating costs of meeting the increasing needs of growing children. Inflation quickly erodes the purchasing power of the original dollar amount, making the support award grossly inadequate to meet the basic and increasing needs of children. Moreover, the fixed award does not reflect increases in the payor's income, thereby making his support obligations an even smaller percentage of his earnings.

The use of automatic cost-of-living increase provisions (known as "COLA" or "escalation" clauses) in child support awards would protect the awards from the erosive effect of inflation, as well as meet the needs of raising older children. Without an automatic escalation clause, the burden is on the child or custodial mother on behalf of the child to return to court and petition for a modification of the support award based on "changed circumstances." The choice for the mother is clear—either she absorbs the impact of the deteriorating purchasing power of the initial award, or she incurs substantial delay and the legal expenses of seeking upward modification, with the attendant risks of a contested custody battle and loss of custody. An automatic cost of living clause does not infringe upon the rights of either parent to petition the court for modification upon a showing of changed circumstances. It merely shifts the burden from the custodial parent to the noncustodial parent to prove his inability to pay the increases when due.

Similar cost-of-living provisions are incorporated in labor contracts, leases and private sector agreements as an efficient means of mitigating the effects of inflation and assuring economic stability of the parties. Automatic escalation clauses in child support orders would help to assure some economic stability for women and children by objectively and realistically measuring their ongoing and increasing needs.

### CLEARINGHOUSE

Under the prevailing child support enforcement schemes, a father ordered to pay child support is typically told to mail the mother a check every pay period; keeping track of the payments, (or lack thereof) is generally the mother's responsibility. The mother also has the burden of instituting enforcement proceedings. It will not be worthwhile for the mother to sue, however, until the amount of support owed her exceeds the attorneys' fee she will have to pay to bring suit. By that time, her financial situation and that of her children is almost always in turmoil. If the case does get to court, judges in many states typically adjust the amount of arrearage retroactively, a remedy virtually unheard of in other contract enforcement actions. The system thus provides a powerful incentive for fathers to ignore the court order.

For this reason we strongly support imposition of a requirement that each state create a clearinghouse to collect and disburse support payments, monitor the timeliness of payments and trigger enforcement procedures upon nonpayment in whole or in part. The clearinghouse-type procedure has been used successfully in several states. But to be fully effective, the establishment of a child support clearinghouse must be mandatory for every state, and combine enforcement with the collection and dissemination of information.

### ADMINISTRATIVE PROCEDURES

While we support the concept of a quasi-judicial or referee system for the enforcement of child support orders, we oppose any requirements that an administrative or quasi-judicial mechanism be used for the establishment of child support levels or for modification of support. In view of inadequate guidelines, this approach is particularly inappropriate. But even if there were adequate guidelines, there will remain additional questions to be litigated in individual cases—for example, extraordinary medical or school expenses for a child or parent, or heavy financial obligations which reduce the resources available for child support. These are appropriate consideration[s] [illegible] support awards. While we are

[illegible] Marriage and Di-

sympathetic to the need for rapid adjudication, we strongly believe that this procedure has no place in determination of child support awards. Indeed, all too often we see cases involving women and children relegated to a less scrutinized decision-making process than other cases by our legal system.

TAX INTERCEPT

We support the concept of interception of tax refunds—federal and state—for satisfaction of past due child support obligations. We strongly support its use in non-AFDC cases as well as AFDC cases. There is simply no rational justification for drawing a distinction between these families—the financial needs of the children and mothers exist in both. Access to tax refunds has already been proven an effective means to satisfy outstanding child support obligations. Extension to non-AFDC families and inclusion of state tax refunds will expand significantly its availability. However, one problem arises with interception of refunds from joint tax returns when only one parent is liable for past due support. Thus, it may be necessary to develop procedures to protect that portion of the refund due to the nonliable taxpayer.

The refusal of nearly two-thirds of absent parents to contribute to the support of their children makes appallingly clear the magnitude of the child support problem in this country. It is shameful that in a land which boasts a high standard of living and concern for quality of life, so many children and their mothers are condemned to lives of poverty, due in part to the chronic failure of the non-custodial parent to meet support responsibilities. Now that this national disgrace has been made a matter of public debate, perhaps they can look forward to an economically secure future.

Thank you.

Ms. Avner. I am here this morning not only on behalf of the NOW Legal Defense and Education Fund, but also on behalf of the National Center on Women and Family Law.

The NOW Legal Defense Fund is a nonprofit, tax-exempt civil rights organization dedicated to challenging sex discrimination and securing equal rights for women and men. Formed in 1970 by leaders of the National Organization for Women, a national membership organization of more than 209,000 women and men and over 725 chapters throughout the country to provide educational and litigating resources for the women's movement. The LDF has long been concerned with the deteriorating financial plight of women, especially women and their children after divorce.

The National Center on Women and Family Law is a not-for-profit organization, incorporated under the laws of the State of New York, for the purpose of litigating and providing technical assistance on behalf of poor women in the area of family law.

NCOWFL is funded by the Legal Services Corporation to serve as a national support center on poor women's issues and family law issues. NCOWFL provides backup support for local legal services programs and advocates in every State, and in addition sponsors the National Child Support Enforcement Advocacy Network, comprising over 70 community groups around the country, working toward the improvement of child support enforcement.

In its daily work with legal services programs, around the country, and through its sponsorship of the National Child Support Enforcement Advocacy Network, NCOWFL is painfully aware of the poverty of women and children caused by the failure of fathers to meet their support obligations and the failure of our judicial system to treat these obligations seriously.

I am representing these groups because of our overriding concern for the growing poverty among women and children and the impact of divorce on their economic status. The current child sup-

port system, with its low awards and inadequate enforcement procedures and remedies, significantly contributes to the massive shift of women-headed households into poverty. Every day our organizations receive telephone calls and letters from women across the country describing a multitude of serious problems very similar to the problems you have already heard this morning, involving inadequate child support awards and enforcement and begging us for help.

But we can provide help in only a limited number of cases. The systemic problems we cannot solve alone.

Therefore, we applaud your interest in this critically important issue and your concern for the plight of women and children whose economic survival is inextricably intertwined with an award of adequate child support and enforcement of the order. We gladly join in your inquiry and commitment to remedying this national disgrace and assuring an adequate standard of living for divorced women and their children.

We speak at a time when the National Advisory Council on Economic Opportunity has declared that the feminization of povery has become one of the most compelling social facts of the decade. The advisory council has estimated that if current trends continue, the povery population by the year 2000 will be comprised of women and children exclusively.

The relationship between divorce and poverty among women and children has been made alarmingly clear. One year after divorce, a woman's standard of living plummets by 73 percent while a man's standard of living actually increases by 42 percent. The deteriorated economic position of divorced women has a profound and direct impact on their children. From 1970 to 1981, the number of divorces in this country doubled. Over the same 11-year period, the number of children living with one parent increased by 54 percent to a total of 12.6 million children, or one child in five. In 1978, 7.2 million women in this country were single mothers living with their children,more than 90 percent of all children with one parent live with their mother and for this reason, I will refer to custodial parents as women. And the vast majority of these children have a living noncustodial parent from whom they are entitled to receive support payments. Yet, the appalling truth is that 41 percent of all custodial mothers are awarded no child support from the father.

But an award of child support is only a small roadblock in the seemingly inevitable downward spiral to poverty for, when awarded, the amount is inevitably inadequate and rarely collected.

Needless to say, the burden of filling the gap between the support payment and the necessary cost of meeting the child's needs falls on the mother. This imposition is exacerbated by persistent sex discrimination in the paid work force, which reduces the mother's earning power.

Contrary to popular blief, mothers receiving public assistance contribute more to the support of their children from their own employment earnings than do absent fathers.

In Wisconsin, for example, mothers receiving AFDC, who were also employed in the paid work force, contributed $83.2 million per year to the support of their children, while all the fathers of these children contributed only $28 million per year.

Also contrary to popular belief, there is little relationship between the father's ability to pay child support and either the amount of the award, or the extent of compliance with the order. For example, a study in Denver, Colo., revealed that two-thirds of the fathers were ordered to pay less support for their children than they reported spending on monthly car payments.

A Cleveland, Ohio, study found that most ex-husbands retain 80 percent of their former personal income after divorce, even after all alimony and child support were paid. And a California study of couples divorced after at least 18 years of marriage found that the ex-husband and his new household had more than double the disposable income per person than did the ex-wife and her household, even assuming all support payments were made and taking into account the ex-husband's new dependents.

Federal involvement in the support enforcement area has resulted in some progress. However, there is clearly room for improvement. We hope that these and similar hearings, and the recent public attention focused on this critical problem, will result in much needed change.

As I said, although we will not respond in detail to various legislative proposals, we do have some general comments about the types of reforms we would like to see.

First, with regard to standards for setting an award. It is clear that even the most effective enforcement of support orders will not remedy the more basic problem of the inadequate awards in the first instance. Meaningful standards for determining support awards are a prerequisite to meaningful reform. The standards that are currently in use for the amount of support to be awarded disadvantage the custodial mother by using as a starting point the minimal amount on which she and the children can subsist. Existing standards also fail to take appropria e account of the nonmonetary child rearing and nurturing contributions provided by the custodial mother.

Our experience from reviewing actual amounts of support awarded has made clear that courts rarely have a realistic idea of the actual cost of meeting even the minimal needs of a child today and in the future. This view has been corroborated by NOW LDEF's national judicial education project, which, in educating and training judges about the effect of their support awards, has uncovered similar misperceptions.

Almost all courts employ some kind of cost-sharing system which computes the costs of rearing the children. After establishing these costs, the court normally proceeds to allocate responsibility for these expenses between the parents by using a simple cost-division system, basing awards on information supplied by parents about each of their net earnings. The judge will usually use this information to calculate a figure said to represent a reasonable share of child support expenses for the father to pay. Unofficially, however, many judges have adopted a cap on child support amounts, above which they almost never go.

Certainly there is no universal standard for the cost of rearing a child. Cost cannot be determined except by reference to the economic status of the parents. A preferable alternative to the cost-sharing approach is an income-sharing or equalization principle,

which seeks to equalize the financial burden, so that each family member experiences roughly the same proportional change in living standards, taking into account the financial resources at the parents' disposal. This would assure meeting the children's needs without imposing a disproportionate financial burden on the custodial mother.

With regard to automatic Federal wage attachment or withholding systems, you have our comments in written testimony. And basically we are in agreement with what has been said previously. With a caveat of picking up something that Fran mentioned, which was the importance of developing similar procedures for withholding our tax refunds derived from income other than wages. Wages is obviously the easiest.

Ms. ROUKEMA. Yes.

Ms. AVNER. We also support automatic cost-of-living adjustments included in support awards for most families, because initially low support awards are never adjusted throughout the child's minority. They utterly fail to keep pace with inflation and the escalating cost of meeting the increasing need of growing children. Inflation, as we all know, quickly erodes the purchasing power of the original dollar making a support award grossly inadequate to meet the basic and increasing needs of children.

Similar cost-of-living provisions are incorporated in labor contracts, leases, and private sector agreements as an efficient means of mitigating the effects of inflation and assuring economic stability of the parties. Automatic escalation clauses in child support orders would help assure some economic stability for women and child by objectively and realisticly measuring their ongoing and increasing needs.

With regard to the clearinghouse, under the prevailing child support enforcement schemes, a father ordered to pay child support is typically told to mail the mother a check every pay period. Keeping track of the payments or lack thereof is generally the mother's responsibility. The mother also has the burden of instituting enforcement proceedings.

It will not be worthwhile for the mother to sue, however, unless the amount of support owed her exceeds the attorneys' fees she will have to pay to bring suit. By that time, her financial situation and that of the children is almost always in turmoil.

If the case does get to court, judges in many States typically adjust the amount of arrear as retroactively, a remedy virtually unheard of in other contract enforcement actions.

The system thus provides a powerful incentive for fathers to ignore the court order.

For this reason, we strongly support imposition of a requirement that each State create a clearinghouse to collect and disburse support payments, monitor the timeliness of payments, and trigger enforcement procedures upon nonpayment in whole or in part.

The clearinghouse-type procedure has been used successfully in several States. But to be fully effective, the establishment of a child support clearinghouse must be mandatory for every State, and combine enforcement with the collection and dissemination of information.

With regard to administrative procedures that have been suggested, while we support the concept of quasi-judicial or referee system for enforcement of child support orders, we oppose any requirements that an administrative or quasi-judicial mechanism be used for the establishment of child support levels or for modification of support. In view of the inadequate guidelines, this approach is particularly inappropriate. But even if there were adequate guidelines, there will remain additional questions to be litigated in individual cases.

While we are sympathetic to the need of rapid adjudication, we strongly believe that this procedure has no place in determination of child support awards. Indeed, all too often we see cases involving women and children relegated to a less scrutinized decisionmaking process than other cases by our legal system.

With regard to tax intercepts, we support the concept of interception of tax refunds, Federal and State, for satisfaction of past due child support obligations. We strongly support its use in non-AFDC cases, as well as in AFDC cases.

Let me just say in conclusion that the refusal of nearly two-thirds of absent parents to contribute to the support of their children makes appallingly clear the magnitude of the child support problem in this country. It is shameful that in a land which boasts a high standard of living and concern for quality of life, so many children and their mothers are condemned to lives of poverty, due in part to the chronic failure of the noncustodial parent to meet support responsibilities. Now that this national disgrace has been made a matter of public debate, perhaps they can look forward to an economically secure future. Thank you.

As I said, Congresswoman, we would be glad to submit, given the lateness, a more detailed statement and include answers to whatever questions you might have.

Ms. ROUKEMA. Thank you. I appreciate your testimony. It is quite comprehensive and elucidates a good number of the issues that we have already discussed.

I noted that perhaps you are the only one that indicated serious questions about administrative procedures, and we will take that under consideration, and it will be brought to the attention of the panel as well as the committee members.

I would say that in view of the hour, I would simply like to summarize by indicating to you that I think this has been not only an informative meeting, but it has been enlightening in certain areas—some areas which have not been fully explored previously, to my knowledge, at any of the hearings that have been held.

Second, it reinforces our own convictions and dispels any question about the certitude of our position here, and the need for fundamental reform.

To repeat something I said at the beginning, my biggest concern at the moment is that we missed the opportunity to make a fundamental reform here. And that the committee, in compromising as committees sometimes must do, the differences and distinctions between the bills, will ignore some of the fundamental aspects of it and really the changes and modifications will be more apparent than real.

I think having had this record before us, the record of today, I see no reason why we cannot forward this record, not only to our own committee members, but also to those cosponsors of legislation, as well as to the subcommittee members of the other committees. I think the Ways and Means Subcommittee will greatly benefit from the statements that were made here today by people in the field who know the issue and know the workings of the system. So that it is not a theoretical issue that we are dealing with. It is something that is very pragmatically real and we have to have pragmatic answers to the problem.

So I do thank you. I hope you will recognize my need for making a hasty exit here. But do feel free—I know I am speaking for the Congressman, as well as myself—do feel free to forward further information to us, and if you would like to contact us individually for assistance, I am sure that both Congressman Biaggi and I would welcome any such requests.

Thank you very much for your patience.

[Material submitted for inclusion in the record:]

PREPARED STATEMENT OF KAREN SHAW, BAYSIDE, N.Y.

Mr. President: your State of the Union message and recent personal experience have prompted me to write this letter and prepare the attached proposal. I write not for my sake alone but for the sake and future hope of many who struggle and suffer the ordeal of being single parents. And above all else, I write for the many children, our nation's greatest resource, who should not forever be innocent victims, losing life before it has begun. I as a person am insignificant. However, the issues and proposed resolutions I have presented are not for they affect everyone throughout our nation.

Federal, State and local welfare systems are overwhelmed with the continuing yearly increases in demands. You have identified increasing Federal deficits as arising predominantly from uncontrolled growth of the budget for domestic spending. And yet, strangely, fraud and waste accelerate and continue to run rampant, the abuse of taxpayers heightens, the suffering of the needy intensifies. As a result the struggling working single parent is losing strength and hope, and in particular are failing in restoring the health and vitality to their children's sense of well being and security. The single working parent, such as myself, who does not seek nor use welfare aid, and who is not receiving child support, is beginning to fall in these difficult economic times. Those more unfortunate who have lost the struggle and receive aid are rapidly becoming outcasts in our society, doomed to a life of despair. For all of us doubt and cynical eyes are succumbing to the belief that we no longer have a meaning, nor make a difference in our nation's society and culture.

Neither words nor hope alone will reverse this tragic downward trend for many of our citizens and children. Deeds are what is needed now. Deeds performed with courage, strength, common sense and a commitment to fairness. I do not take a first step in this matter for I am sure others have walked before me. However, what I propose as resolutions may be unique.

My proposal deals with a particular child support situation, that in which the custodial and non-custodial parents reside in different states. I have been objective and avoided personalizing the issues involved. These issues have been derived from personal experience and discussions with others who are professionally engaged in this type situation for child support proceedings. My proposal is directed at providing the following: More efficient, effective, uniform legal proceedings for enforcing child support laws; fair, just method for all parties concerned; minimizing the possibility of fraud; and ending the waste of time, effort, costs associated with repeated court action procedures.

Your intentions to strengthen enforcement of child support laws, and at the same time transferring more welfare system control and responsibility to the states, are self-defeating in this particular child support situation. State sovereignty is not at issue here. What is at issue is the lack of uniformity in child support proceedings and penalties from state to state, lack of commonality in child support laws, and inadequate availability to acquire basic accuarate information for each case. The present situation simply providing a haven for disappearing acts by the non-custodi-

al parents, whom if provided their rightful contribution for child support, would ease the welfare burden all of our citizens now carry. As identified in my proposal, the reality of this particular situation requires and demands the reverse of your intentions. The issues involved clearly point in this direction.

The intent to strengthen enforcement of child support laws is, in itself, dubious for the various reasons mentioned above (i.e., laws vary from state to state; they are subject to fraud, inaccountability, lengthy time intervals, etc.). The concentration should be placed on change. The need for change is nationwide and indisputable. To quote you, Mr. President, "The very key to our success has been our ability, foremost among nations, to preserve our lasting values by making change work for us rather than against us." What more could we ask than to preserve our values of responsibility to our children—morally, financially, emotionally?

The non-custodial parents who migrate to different states and renege on their responsibilities do so not just financially and morally, but criminally as well. We cannot let it be forgotten that these agreements are a result of a court issued proclamation; that the papers they have signed and agreed to are legal documents. These people are simply breaking the law. Without Federal guidelines/criteria as a common bond for all states, as well as some significant changes, the time, variations in laws, etc. will continue to allow this mockery of the court to occur time after time, case after case. While these time consuming and confusing variations of the laws continue, the victims (the children) continue to be victimized. It has always been my understanding that the guilty are punished for their crimes and the innocent triumph. In these circumstances the guilty triumph while the innocent (children) suffer. Perhaps I've seen too many old western movies where the "good guys" in the white hats always win; perhaps I have mistakenly believed that justice prevails; perhaps I have mistakenly believed that this government is "of the people, by the people and for the people".

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The lack of uniform laws/guidelines/policies and servere penalties for all the states indulges these "runaway parents", feeds the addiction of irresponsibility. What this situation requires is Federal law, not Federal aid; legal procedures, not forever ongoing interstate committees developing guidelines.

FACT

A lack of communication between (A) Principals, (B) States involved , and (C) the District Attorney and Petitioner provides for needless lengthy time intervals, a state of financial suspension and deprivation, and a possible allowance of fraud and injustice.

*A. Principals*

1. *Status of Non-Custodial Parent*—Where a lack of communication exists between the two parents, there are several status changes in which the custodial parent may not be aware: financial ability, hospitalization of the non-custodial parent, death of the non-custodial parent, disability of same, change in employment status (i.e., job/career change, salary change, unemployment, etc.).

2. *Custodial Parent-Budget*—In many cases the non-custodial parent may be financially responsible for the children's food, shelter, education, medical insurance, etc. In the majority of these cases, it is the responsibility of the custodial parent that all these financial obligations be met. The difficulty is incurred when the failure of the non-custodial parent to meet his/her support payments occurs and the custodial parent is unaware the check is not forthcoming.

3. *Children.*—When the non-custodial parent is delinquent in his/her attempts to communicate with the children it is especially detrimental to their well-being.

*B. Between States*

1. *Laws/Procedures.*—State authorities are not knowledgeable of the laws/procedures governing other states re: child support collection. Therefore once the Petitioner's state has mailed the initial papers to the Respondent's state, they must wait, unaware of the specific procedures/time intervals, until they receive word. That case is then put aside until work arrives of a court date, etc.

2. *Postponments.*—The petitioner's state is not advised as to whether or not a postponment has been issued during the original court date. If notification of an order does not arrive from the Respondent's court within approximately 2 weeks, the Petitioner's state may assume a postponment has occured. Due to this lack of communication, the Petitioner and his/her state authorities are not made aware of the new court date(s).

*C. Between district attorney and petitioner*

The District Attorney (in the Respondent's state), representing the Petitioner, is not made aware of any repetitive characteristics of the Respondent (i.e., chronic lying, moved/disappeared several times, history of irresponsibility, etc.). The D.A. is also unaware during the court proceedings of any discrepancies in the Respondent's testimony. The D.A., representing the Petitioner, cannot insure "the whole truth and nothing but the truth", disallowing for justice. There is no communication between the district attorney and the petitioner. The D.A., representing the Petitioner, relies solely on papers that have specific and possibly outdated financial data whereby the Respondent and/or his/her attorney are present at the proceedings to intercede whenever a question or mis-statement arises. Possible allowance of fraud? Definitely. Possible inequity/injustice? Definitely.

PROPOSED RESOLUTIONS

*A. Principals*

1. *Status of Non-Custodial Parent.*—Several utility companies employ a "Third Party System" whereby the third party (possibly a neighbor) is informed of notices, etc. and is responsible to inform the customer of such notices/changes. In the instance of child support, the court can designate a third party (friend, family member) whose responsibility would be to notify the custodial parent as soon as any change in status occurs (i.e., hospitalization, death, unemployment, etc.).

2. *Custodial Parent—Budget.*—It is the *absolute* responsibility of the non-custodial parent to inform the custodial parent when the child support payments are not forthcoming.

3. *Children.*—I realize that no court of the land could enforce communications between parent and child. However, this issue is listed here as it is an unfortunate common parameter in cases such as these.

*B. Between States*

1. Federally created guidelines/laws/procedures/penalties would allow for uniformity among all states whereby migration to specific states is not an advantage for their leniency in their laws/penalties and signed agreements are upheld from state to state recognizing these documents as lawful and binding.

Guidelines should be arranged to include: (a) laws; (b) procedures; (c) time intervals; and (d) penalties.

2. In conjunction with number 1 above, a form letter postcard (See Fig. 1) would be mailed by the Respondent's state to the Petitioner's state noting a postponement and new court date, to be sent out as many times as there are postponements/new court dates (which should be limited).

*C. District attorney and petitioner*

Two plausible resolutions come to mind:

1. Whereby the Petitioner attends court proceedings (at the Respondent's expense) and meets with the D.A. prior to/during the court appearance. This procedure would also eliminate the possibility of excessive postponements as the Respondent would finance the Petitioner's fare (in advance of the court date) for each court appearance.

2. Whereby the D.A. and Petitioner confer by telephone prior to court date with a follow-up letter confirming all points discussed sent by the D.A., signed by Petitioner for verification, and returned to the D.A. prior to court date.

FACT

During the lengthy time intervals of initiating and processing legal procedures, circumstances could develop in the single parent family (i.e., illness, accidents, etc.) which would result in irreparable damage. Bills must be paid; responsibilities of the custodial parent do not become suspended due to a "temporary" lack of funds. Whether the custodial parent is being subsidized by welfare agencies or by family/friends, these lengthy and sometimes "unsurvivable" time intervals create even larger financial and emotional hardships and tremendous debt.

These time intervals involve the following succession of events: Suit Initiation; Locate/Serve Respondent; Court Date; Possible Postponement(s); Notification to City/State Agency of Petitioner of Court Order; and Possible Appeal/Investigation. We are discussing time periods of well over one year.

PROPOSED RESOLUTION

Procedures/Correspondence/Notification Status of case should be timely and submitted on a regular basis. Uniformity, concise procedures/time intervals, limited postponements, accurate/complete data (see Info/Data Accuracy—next FACT) during court proceedings should allow for a more precise, concise procedure.

With Federally created guidelines generated, once the Respondent is located/served the process to follow could be expedited as quickly as possible. This would not only aid the custodial parent, but the pressures and costly expenditures to each state/city/local authority (courts, welfare and subsidy agencies, etc.) would be alleviated.

FACT

There is tremendous susceptibility to fraudulent claims and statements due to the lack of pertient, accurate, timely information and data.

PROPOSED RESOLUTION

*A. IRS request form*

This resolution covers several issues: time savings, information/data accuracy, and IRS application.

I have provided for an IRS Request Form (See Fig. 2) for the court in the Respondent's state to issue to the IRS promptly upon receipt of the Petitioner's claim. This form and timely response by the IRS would assure the following:

1. *Time Savings.*—This information, received by the Court prior to the court date would, in most cases, eliminate an investigation subsequent to the order of the Court, reducing time.

2. *Information/Data Accuracy.*—The court relies on evidence brought by the Respondent (i.e., salary, financial obligations other than the child support, etc.) which may be questionable. This form would allow the judge to have all pertinent and accurate information prior to as well as during the court proceedings. Assuming all income tax returns are based on truth, the Court would be accurately and well informed.

3. *IRS Application.*—The IRS would at this point have incorporated a computer file based on those delinquent in child support payments.

*B. Investigation prior to court date*

This resolution would call for an investigator from the Respondent's State D.A.'s office to investigate the life style, income, etc. of the Respondent prior to the court hearing providing the court with accurate information.

The primary function of these two resolutions is to secure accurate data prior to the actual court hearing. Without this pertinent information, the judge has no way of knowing what is truth and what is an intended falsification.

FACT

The IRS will intercede only if the Petitioner is receiving welfare subsidy or, for those not receiving welfare subsidy, as a "last resort". For the Petitioner receiving welfare payments, the IRS will withhold the Respondent's Income Tax refund sending it to the welfare agency as reimbursement for the Petitioner. The Petitioner receives no monies from the Respondent's refund. For the Petitioner who does not receive state/city/local subsidy, the IRS will step in only as a "last resort" (i.e., only after a court order stating that nothing can be done to obtain money from the Respondent on a regular basis). Then, and only then, will that procedure be instituted.

At this point in time there are local court officials and IRS representatives who are not even aware of this procedure; who, therefore, cannot provide this information to the Petitioner, who, in most cases, relies on these people for guidance.

PROPOSED RESOLUTION

Allowing for the new computer file of those delinquent in child support payments based on the IRS Request Form (Fig. 2), the procedure of sending the Petitioner the Respondent's refund would be facilitated. Receipt of the IRS Request Form would alert the IRS to withhold the refund until an order by the court to withhold or release the refund is received. This decision to allow the IRS to withhold or release the forthcoming refund could now be determined in court, by the Judge, and automatically/expeditiously followed through by the IRS.

For those custodial parents on welfare, or any local subsidizing agency, the refunds would be paid directly to them until such a time that regular payments commence. At that time, subsequent refunds should be sent directly to the subsidizing agency as reimbursement.

As the IRS would be informed to withold any forthcoming refund as soon as the IRS Request Form is received, they would hold back all forthcoming refunds until they become notified the timely payments have resumed. If the court resolves the situation immediately, the IRS would be informed by the court to allow the Respondent to receive his/her refund.

Although this procedure/resolution could not possibly begin to alleviate the financial difficulties of the custodial household, the family could be assured of receiving some financial assistance from the non-custodial parent. There must be some form of penalty directed at the irresponsible/law-breaking behavior of the Respondent. Their obligations must be met—whatever legal methods possible.

If this resolution were to be an automatic part of the court procedure, included with the IRS Request Form, all court officials and IRS representatives involved would be aware and therefore able to guide the Petitioner as to what steps may be taken to assure the receipt of some monies for his/her family.

*Remarriage of non-custodial parent*

FACT

The remarriage and "second family" of the non-custodial parent quite often takes precedence over the "first family" by the non-custodial parent. Usually one of the two following situations takes place:

(1) When the remarriage includes children (either the wife's from a previous marriage, or from this marriage) responsibility and obligations to those children become priority over the children of the first marriage. Frequently the children of the first marriage are neglected both financially and emotionally. (out of sight, out of mind;)

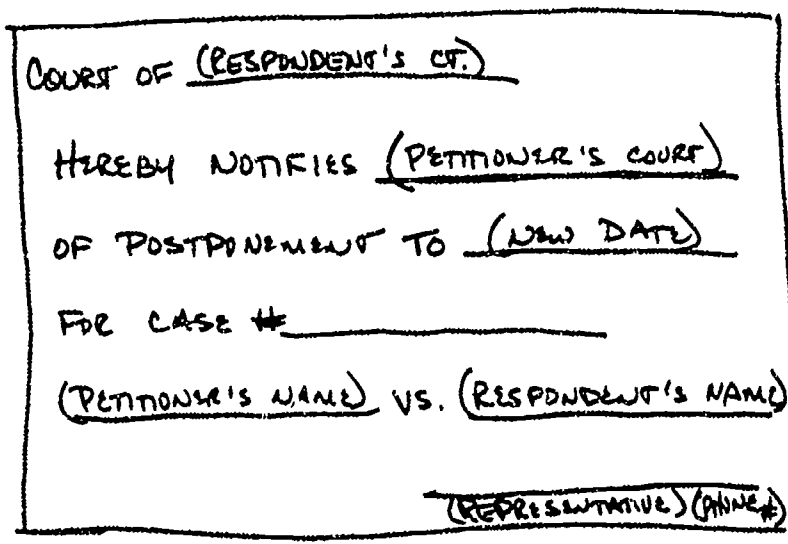
(2) In most cases when there are no children of the second marriage, the present wife is employed outside the home. With the addition of the new salary into the household, lifestyles/standards of living of the non-custodial parent becomes enhanced while the lifestyle/living standard of the "forgotten family" declines.

PROPOSED RESOLUTION

If the liabilities/debts of the non-custodial parent is alleviated by the present spouse, or by the new combination of incomes, the delinquent child support payments should be included as a liability. The combined incomes should reactivate the regularity of the payments. When such a marriage occurs, the new spouse must comprehend the reality of these children along with the legal, moral and financial obligations.

6. *Visition.*—There are two sides to every story—There are many cases where the custodial parent poisons the mind of the children against the non-custodial parent whereby they do not want to see their other parent, or whereby the custodial parent does not permit the children to see their other parent. However, there are also many cases in which the custodial parent realizes the emotional trauma the children will experience at being denied the time with the non-custodial parent and allows this right of visitation to take place regardless of severe hardhips caused by the noncustodial parent.

FIG. 1 FORM POSTCARD NOTING POSTPONEMENT/NEW COURT DATE



INTERNAL REVENUE SERVICE

REQUEST FOR FEDERAL INCOME TAX INFORMATION

LOCAL COURT:_____

PETITIONER (NAME), residing at (ADDRESS),

SOCIAL SECURITY NUMBER_____, has hereby instituted legal action against

RESPONDENT (NAME), residing at (ADDRESS),

for delinquency in Child Support payments.

The (LOCAL COURT), of (COUNTY, STATE) hereby

requests the following information from the RESPONDENT'S (YEARS) Federal Income

Tax return. This information is needed on or before (DATE) so we may expedite this matter.

NAME (RESPONDENT) _____ SOCIAL SECURITY NUMBER_____

- ☐ Total Gross Income
- ☐ Deductions (Total ☐ Itemized ☐)
- ☐ Marital Status
- ☐ Place of Employment (Name of Company, Address)
- ☐ Dependants
- ☐ Tax Refund (Amount) or Amount Owed

_____

Representative (Name, Phone Number)

PERSON CASE HISTORY

July 1981.—Father (non-custodial parent) voluntarily moved to Houston, Texas. Support payments fairly regular.

December 1981.—Father sent round trip tickets for children to visit during Christmas vacation. Children spent 10 days with Father in Texas.

* February 1982.—See next page

April 1982.—ALL PAYMENTS CEASED. Although mandated by the divorce, payments for medical bills/insurance, etc., were never received—only child support/alimony payments. Promises—"Check will be/was mailed"—checks never recieved.

* May 1982.—Daughter called Father's home in Texas and was informed by a roommate Father was in New York. Daughter quite upset. Attended daughter's school graduation exercises—took son out for lunch—took both children out for dinner. Promised to send checks, upon return to Texas. Checks never received.

June 1982.—Daughter called Father's home in Texas and was informed by a roommate Father was in New York. Daughter quite upset. Attended daughter's school graduation exercises—took son out for lunch—took both children out for dinner. Promised to send checks upon return to Texas. Checks never received.

Summer, 1982.—No communication with children entire summer. Had argument with son—son didn't call Father (the only way the children ever spoke with their father was if they called him) so Father didn't call son.

August 15(?), 1982.—Father remarried in Philadelphia (less than 2 hrs from children's home). Didn't invite/inform children of marriage.

August 24, 1982.—Daughter phoned father. Father informed daughter of remarriage. Daughter shocked/upset. Didn't speak to/inform son—promised to call son next AM to tell him.

August 25, 1982.—A.M.—Did not call/inform son of remarriage. P.M.—Son found out accidentally at friend's wake in Funeral Home.

August 30—Sept 4, 1982.—Father in New York for his mother's funeral—stayed (with children at his brother's home) for 1 week. "Boasted" to family members re: new escalated financial status (remarriage—new shoes, new car, new apartment, money in checking account, etc.)

From September 1 to present, no communication between two parents. Any information received by father (i.e., children's health, education, welfare, etc.) was given by children (reliable information? Sufficient information? Total information?)

September 24, 1982.—Mother (custodial parent) instituted court proceedings.

* February 1982.—Father promised son money for trip upstate—money not received—Son borrowed money from friend to be repaid as soon as check from father received.

February 1983.—Letter, dated February 9, 1983, received by NY court from Texas DA's office—cannot locate respondent (Father). Petitioner (Mother) phoned Texas DA's office spoke to investigator providing them with more accurate information (phone number, apartment number, etc.). Daughter phoned father—told him "There's no food in the refrigerator. Could you please send us some money?" Father promised to send a check—check never received.

February/March 1983.—Petitioner phoned Albany re: IRS intervention, possibility of expediting case. Informed IRS will not intervene unless: (1) Petitioner on welfare (monies then go back to the welfare agency as reimbursement), or (2) As a "last resort" after "all else fails." (Also spoke to IRS who did not know of any procedure and who referred me to Albany, and to someone in the NY court who also did not know of any procedure involving the IRS.)

May 1982.—Son received check from father for February trip (following many requests, broken promises and arguments).

March/April 1983.—Respondent served with papers from Texas court. Court date (April) postponed to J ne 13 to allow Respondent adequate time (for what?).

May 1983.—Visited with children for week-end—Gave children check for $100 to give to mother (as support pmt.?).

May/June 1983.—Received 3 checks during approx. 5 week time period of $50 each (for support?).

June 17, 1983.—Petitioner phoned Investigator in Texas to find out whether a postponement or an order by the court was handed down on June 13. I was informed the latter had occurred and that the information would be sent to the New York court in 1 to 2 weeks.

July 1983.—Mother applied for Life Ins. policy of Father to insure children's welfare in case of his death—Father has not responded to Ins. Co's request. (Agreement allows for each parent to Ins. other parent for benefit of children) at no cost to the Father.

July 1983.—Father visited with children for week-end—Son only saw Father on Sun.

July 24, 1983.—Son in auto accident—Son informed Father. Still no communication between parents.

July 1983.—No word from Texas re: court order. New York court requested status report. No response.

August 1983.—Ins. Co. sent reminder letter—still no response.

August 9, 1983.—8 weeks after June 13 court appearance—still no word from Texas. Petitioner phoned investigator in Texas DA's office for information. Informed of postponement ("re-set") Not court Order, as previously told to August 22, 1983 (11 months after initiation of suit) "By consent of counsel" inferring Respondent has retained counsel.

August 25, 1983.—Petitioner's Court received notification from Texas DA stating respondent unemployed at present time—new court date—Sept. 26, 1983 (1 yr. and 2 days after claim initiated).

August 31, 1983.—Petitioner telephoned DA in Houston, Texas. Secretary would not put call through, stating "The District Attorney does not speak to the Petitioner." Petitioner argued stating that since he is representing her in these proceedings, he most certainly speak with her. After hesitating., the secretary put the Petitioner on hold for a few minutes. Finally, the D.A. picked up the phone. I (the Petitioner) asked 3 questions:

(One) Could I have a transcript or a copy of the notes from the court hearing on August 22?

(2) The form I received had several requests on it, one requesting an "Affidavit of Arrearages." Since my claim stated arrears, why wasn't I asked for an "Affidavit of Arrearages"?

(3) I told him about the life insurance situation and asked about including it in the Sept. 26th court proceedings.

The answers were as follows:

(1) "There is no transcript or any notes, therefore I cannot obtain a copy of either."

(2) "The "Affidavit of Arrearages" would be considered hearsay and they wouldn't go by what it said. Although the Respondent's testimony is also hearsay, they will go by what he says."

(3) "We don't consider life insurance child support, therefore, we cannot include it in the court hearing. We only concern ourselves with future child support payments—nothing else. The divorce papers are not upheld here—it doesn't matter what they say. You would have to get a lawyer (Private) in N.Y. to get in touch with a lawyer down here to bring it to court. Even then I doubt it will be upheld."

*Note No. 1*—Father, since moving to Texas, has never called children—if they want to continue the relationship, they must call him (collect, of course).

*Note No. 2*—Father relies totally on information received from children and accepts all information received as reliable. (Daughter neglected to inform him of her school problems and was told to do so by mother when she was forced to attend summer school. Of course he was surprised.)

*Note No. 3.*—Throughout proceedings up to present, NY courts extremely helpful, but have hands tied. Constant answer from both New York and Texas offices is "I don't know how they work it there so I can't answer you."

*Note No. 4.*—Children suffering from tremendous inner turmoil. "How can I love my father and not like him?" They suffer from bouts of anger, hurt, love, hate, fear.

*Note No. 5.*—Athough a legal document, signed by a Judge, has been agreed to and signed by both parties, the non-custodial parent may move to another state and ignore any and all conditions/agreements/obligations that he/she should be legally bound to.

Nearly every magazine I pick up these days has an article with the high and rising statistics of child support payments not being paid. With these statistics and number of articles on the rise, it is safe to assume the laws in effect at this time are ineffective.

29-805 O - 84 - 7

FAMILY COURT OF THE STATE OF NEW YORK,
COUNTY OF ONONDAGA,
*Syracuse, N.Y., September 13, 1983.*

Re Child Support Payments.

Congressman MARIO BIAGGI,
*Rayburn House Office Building,*
*Washington, D.C.*

DEAR CONGRESSMAN BIAGGI: Reference is made to the Associated Press account of certain public hearings that you conducted with Representative Marge Roukema (R-NJ) in New York City on September 12, 1983 in regard to the difficulty that custodial parents face when attempting to enforce orders of support imposed upon the non-custodial parent.

If you recall, on June 6, 1983 I wrote to you with regard to the plight of certain Vietnamese children. I was advised by your very competent administrative assistant, Mr. Benza, that you appreciated those suggestions and invited me to write to you in the future should the occasion arise. The occasion has arisen.

As the Administrative Judge of the Family Court for the County of Onondaga (Syracuse) for the past ten years, I totally sympathize with the plight of the witnesses who testified before you in New York City. Permit me to make some suggestions with regard to correcting the present injustices:

UNDERTAKINGS TO INSURE FUTURE CHILD SUPPORT PAYMENTS

At the present time it is virtually impossible to persuade any insurance carrier to guarantee support payments ordered by a court and not obeyed. It is fairly obvious that if a non-custodial parent does not have sufficient regard for the welfare of his children to make his support payments, it is extremely doubtful that he would have any higher regard for his obligation to an insurance company. The question then becomes, "How can we overcome this reluctance?". I suggest that the federal government, as an amendment to Title IV-D of the Social Security Law, establish a loan guarantee program which would insure bonding companies of payment should the non-custodial parent fail to make the payments. Having just read my suggestion I would assume your first reaction would be, "No way!". Therefore, if the suggestion is to receive any serious consideration, I must now propose a way to limit the exposure of the government to loss.

The efficient way to accomplish this would be to amend the Internal Revenue Code to provide that any liability that the federal government incurs as a result of guaranteeing payments (plus interest and collection expenses) may be deducted from the wages of the non-custodial parent in the same manner and on an appropriate schedule as income taxes are presently withheld. With regard to the self-employed where withholding is impossible, the government could recoup any payments in the same manner using the same collection procedures involved in the payment of income taxes by the self-employed. With regard to any balance not recouped by the federal government during the working career of the non-custodial parent, I suggest that the Social Security Law be amended so that when that person retires, his social security benefits be partially paid over by the social security administration to the federal government from the account of the non-custodial parent, in effect, reducing his retirement benefits.

It might be argued that in doing this the federal government would so reduce the means of livelihood of the retired, non-custodial parent that that person would now have to seek public assistance and what you make on the apples, you just lose on the bananas. On as actuarial basis, I don't know that that is true, since the liability for child support for most workers ends long before they are eligible for social security benefits, and any arrears to which the federal government is entitled could be recouped using the above-suggested withholding procedure during the working years of the non-custodial parent, leaving, in the vast majority of cases, rather insignificant sums to be recouped during the retirement period.

INCIDENTAL ADVANTAGES TO SUCH A PROPOSAL

At the present time the federal government is totally insulated from any control whatever over support orders. Should this undertaking proposal be adopted, of necessity the insurance carriers would begin to develop a national standard for support. Unlike flood insurance where one must wait for a flood before you have actuarial experience, given the large numbers of people involved in support, actuarial experience would come very quickly. Once this is developed, the individuals in-

volved in divorce proceedings would be the beneficiaries of some very valuable information.

For example, in many matrimonial actions the matter of support is deliberately left uncertain. I have seen hundreds of provisions like this, "Defendant will pay for the upkeep of the home." Or, "Defendant will be responsible for the reasonable medical and dental costs." These uncertain and vague orders invariably mislead the parties. Without any determination as to the fixed amount of liability,. the plaintiff contracts for home improvements or for dental care, particularly orthodontics, and, makes the non-custodial parent liable for literally thousands of dollars in payments. The bills are now submitted to the non-custodial parent who maintains an inability to meet these costs. Since the State cannot require somebody to make a payment that he is unable to make, the custodial parent (who has relied on the order) feels cheated and deprived. If the parties were compelled to develop precise dollar amounts of liability at the time these orders were made, the non-custodial parent would know the precise extent of his liability and could make meaningful financial plans. At the same time, the custodial parent would be aware of the precise extent of the entitlement under the order and would not incur other expenses without first seeking an upward modification of the order based upon a change of circumstance since the time the original order was made; and, prior to incurring the liability would know whether the non-custodial parent could afford to make the additional payments.

In my considered opinion, the precise setting-out of the extent of entitlement and liability would encourage parties seeking to terminate their marriage to rethinking the consequences of such an action. Under the present system, both parties leave the marriage with total misconceptions as to the actual cost of maintaining separate homes after the divorce. The non-custodial parent frequently grossly underestimates the costs of maintaining living facilities for a single person, and totally underestimates the demands that will be made of him to support the children. At the same time the custodial parent, during the emotional time of the divorce, often fails to develop a realistic budget and therefore makes what later proves to be a totally inadequate agreement with regard to entitlements.

As the actuarial experience is developed, the parties will have the benefit of considering a much more realistic budget submitted by a totally disinterested third party who when given the resources and the financial condition of the parties, will only insure court orders within a certain range. Under such circumstances, I think you will find many custodial parents surprised at the modest level of entitlement they will receive once the independent living costs of the non-custodial parent have been calculated and subtracted from his income; and, at the same time, the non-custodial parent will frequently be enlightened as to the true extent of his liability to the custodial parent.

CONCLUSION

The proposed suggestion, if adopted, then accomplishes a number of socially worthwhile purposes.—Giving true and unprejudiced facts as to the economic realities resulting from divorce cannot but serve as a brake on those seeking the dissolution of their marriage to the conceded benefit of the children.—Where the divorce is in fact finalized, it will remove one of the most galling abuses now prevalent, i.e., despite the order of the court, there is no practical way to enforce the provisions.

There is one point that I have not touched in this letter which I think realistically will have to be addressed, and that is the problem that develops when the custodial parent has been assured child support payments and then willfuly refuses to respect the corollary rights of the non-custodial parent to visitation with the children.

If you feel my suggested proposal has any merit, I would be happy to communicate with you again with regard to developing solutions toward this purpose.

Respectfully yours,

EDWARD J. MCLAUGHLIN,
*Administrative Judge.*

HUMAN RESOURCES ADMINISTRATION,
OFFICE OF INCOME SUPPORT,
*New York, N.Y., September 19,1983.*

Hon. MARIO BIAGGI,
*House of Representatives*
*Washington, D.C.*

DEAR CONGRESSMAN BIAGGI: Thank you for the opportunity to present testimony to your Sub-Committee on the issue of child support.

The New York City experience is one of progress and encouragement. Since the inception of the program we have increased our annual collections substantially while holding down expenditures. However, in order to continue this progress and continue to improve the effectiveness of the Child Support Enforcement Program we will need the continued support from both Congress and the Administration.

The Child Support Program as set forth by Congress in 1975 requires the location of absent parents, the establishment of paternity, the establishment and enforcement of support orders for Aid to Dependent Children (ADC) cases. Services to the non-public assistance families must also be provided so that the necessity to require public assistance can be avoided. This policy as set by Congress is being adhered to in New York City.

There exists in both the Administration in Washington and in Albany a narrow measurement of the effectiveness of the Child Support Program. The single measurement employed is the amount of money collected for ADC cases. This is only one area of performance prescribed by the Law enacted by Congress which mandates other functions such as:

(1) Establishment of Paternity-New York City in FY 1983 located, established paternity and support through Family Court 3,792 cases. An additional 1,805 cases resulted in the establishment of paternity only, but due to financial limitations no support order was granted. No credit or measurement of this activity is acknowledged.

(2) Closing of ADC Cases—In FY 1983, 1,184 ADC cases were closed as a direct result of IV-D activity. As a result of IV-D investigations alleged absent parents were located in the home, the child or children were not in the household, the custodial parent refused to cooperate. A sample caseload was studied to determine how long the case stayed closed, the amount of the grant, etc., resulted in a projection of $2.6 million of annualized savings. In addition to the above approximately 125-150 ADC cases mysteriously close each month after a summons is served upon the absent parent and prior to the Court Hearing Date. That certainly has the earmark of the IV-D activity.

(3) Servicing the Non-ADC Custodial Parent and Child- In FY 1983 New York City collected, processed and distributed $29 million to this group. We provided over 36,000 services, such as location, preparation of petitions, enforcement, etc., to this group. There is no measurement of these efforts credited to the program. The servicing of this population is important. By rendering adequate services we can help prevent the need for this population to require public assistance. It is this population and category of cases that needs additional attention both by the Federal and State governments.

If the Administration Bill is passed, New York City estimates that over $5 million of tax levy funds can be lost and the congressional intent to strengthen the program would not be achieved. There would have to be reductions in the areas that do not produce support payments for recovery of ADC expenditures. This will seriously impact on the loss of a strong deterrent effect the IV-D Program has in containing the growth of the ADC caseload.

The Congress of the United States are the policymakers—If it is the congressional intent that the IV-D Program be engaged in the sole effort to recover ADC expenditures as it is presently measured, then the Law should be changed to reflect that policy. We as Administrators will respond to the requirement of Law and we ask that our performance be judged accordingly.

I am taking this opportunity to enclose a copy of a substantive letter directed to Fred Schutzman, Director of Child Support Enforcement regarding the Administration's position. The letter is written by a very knowledgeable and much respected official who is directly involved with the operational complexities of the child support enforcement.

Again, I wish to thank you for the opportunity to share with you and address the concerns of an extremely dedicated, and hard working staff in the Bureau of Child Support in New York City. The positive results achieved in New York City is as a

result of their professional and efficient approach in dealing with child support enforcement on a daily basis.

Sincerely,

IRWIN BROOKS,
*Assistant Commissioner.*

Enclosure (1).

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NATIONAL RECIPROCAL AND FAMILY
SUPPORT ENFORCEMENT ASSOCIATION,
*Des Moines, Iowa, September 3, 1983.*

Representative MARIO BIAGGI,
*Rayburn House Office Building,*
*Washington, D.C.*

DEAR REPRESENTATIVE BIAGGI: Last week in St. Louis, at the 32nd Annual Conference on Child Support Enforcement, during your keynote address, you encouraged the organization to develop and ratify program recommendations that would enhance service delivery at the state and local level. The organization's legislative committee accepted the challenge and developed recommendations in three areas: (1) Improvements to the interstate process; (2) Changes to the mandated law sections found in H.R. 3546 and H.R. 3545 in conjunction with companion bills S. 1691 and S. 1708; and (3) Alternate funding proposal.

The organization's executive board therefore, wishes to set forth our recommendations that resulted from the national conference. A copy of these recommendations are attached.

In needs to be noted that in regard to program funding, the organization's official position is to maintain program funding at its present level of 70 percent FFP plus 15 percent incentive; however, after much encouragement from members of Congress, an alternate funding proposal was ratified. This endorsement demonstrates our willingness to work with Congress towards program improvement; however, it concerns us that Congress is entertaining the idea of reducing federal funding participation while applying additional pressure on states to expand services to those children not receiving public assistance. State and local child support programs are dedicated to quality service delivery, and will strive to meet the public need for services; however, staffing restrictions will limit service availability.

We appreciate your efforts to curb this chronic problem that affects so many of American's children. As an organization, we will be available to assist you and your staff in every way possible.

Should staff have any questions, please have them contact Ms. Betty Hobday, Legislative Chairman. She may be reached at the following address: Child Support Enforcement, Perry Building, 1st Floor, 2700 West Sixth Street, Topeka, Kansas 66606.

Sincerely,

WANDA RAICH, President.

Attachment.

32D ANNUAL CHILD SUPPORT ENFORCEMENT CONFERENCE, ST. LOUIS, MO., AUGUST 25, 1983

To achieve a federal, state, and local partnership, the National Reciprocal and Family Support Enforcement Association respectfully submits the following recommendations.

I. HOW TO IMPROVE THE INTERSTATE PROCESS

A. Permit the use of a modified W-4 Form to serve wage withholding orders.

1. IRS would require the employer to withhold and send the money to the appropriate IV-D agency.

2. The withholding would be limited to what the IV-D agency certifies within the limitations of the Consumer Protection Act.

3. Limit to interstate cases.

4. Provisions should be developed for obligors with more than one support obligation.

5. Provisions should be developed to give the employer some compensation for handling costs.

B. Full faith and credit to administrative order of all jurisdictions.

C. States should seek the adoption of the revised URESA.

D. Federal study to stimulate revision of the revised URESA law.

E. See paternity recommendation in Second E.

F. Each state should be required to enact provisions for long-arm jurisdiction, permitting the establishment of support orders.

G. Expand access and streamline procedure for IRS 6305 process.

H. Visitation—Although we are committed to preserving the rights of children and recognize the need for visitation in addition to the noncustodial's rights to visit, interlocking the issue of visitation with child support has developed into a serious problem which is not beneficial to the child. Therefore, we support removing this injustice by requiring states to eliminate the defense for lack of visitation when enforcing or establishing support orders.

A remedy to this problem is mandatory income withholding since once payments are regular, the obligee can no longer cite lack of payment as a reason for withholding visitation.

II. MANDATORY LAWS

Since the mandatory law section in H.R. 3545 and the companion bill S. 1708 are similar to H.R. 3546, our comments are directed specificaly to the sections in H.R. 3546.

In proposed U.S.C. Section 467—insert language to declare that the remedies mandated herein are in addition to but not in lieu of existing state remedies and that the use of any one of these remedies does not preclude the use of any other remedies.

*A. Wage withholding*

1. We recommend that the term "income" be substituted for wage.

2. In proposed U.S.C. Section 467(1)(B)—modify notice requirement to provide that states should give notice only as may be required by state law and delete language requiring notice of the amount to be withheld.

3. In proposed U.S.C. Section 467(1)(A)—modify effective data.

(a) Effective upon date of entry of order.

(b) That each state adopt or use existing procedures to enforce another state's orders when the obligor and obligee reside in the same state but the obligor goes across the state line to work in a border state.

4. In proposed U.S.C., Section 467(1)(D), specific language needs to include: (a) Commissions, rents, and bonuses; (b) Retirement benefits; (c) Pensions; (d) Workers compensation; (e) Unemployment benefts; and (f) Dividends, royalties, and trust accounts.

*B. Administrative law*

1. Proposed U.S.C. 467(2)—Delete language restricting use of the state's generally applicable judicial procedures.

*C. Federal offset provisions for non-ADC cases in H.R. 3545 and 3546*

We have procedural concerns with the 1040X process. The obligee's present wife could amend the tax return using the 1040X process up to three years to obtain her share of the tax return. If the tax refund has already been forwarded to the obligee, any adjustment would definitely create a hardship.

*D. Clearinghouse*

1. Central clearinghouses are critical to the success-failures of wage withholding, i.e.,—should the obligee disappear and IV-D agency is receiving those funds, they will not have any place to forward the money.

2. Support the present entitlement funding for computer systems development.

*E. Paternity*

1. Federal law mandating state law that would create a rebuttal presumption of parentage from blood test results.

2. Need professional standards for blood testing lab.

3. Each state should be required to enact a long-arm paternity jurisdiction statute.

*F. Federal enforcement—IRS 6305 process*

1. Expand access and streamline procedure for IRS 6305 process.

2. Eliminate last resort restriction.

3. OCSE regional offices will be reasonable for central monitoring and reporting of those collections to avoid duplication of effort.

4. Permit the use of this process in combination with ongoing state enforcement remedies.

*G. Fees*

1. Do not support any type of application or user fee structure.

III. FUNDING

The organization supports the following funding proposal as developed by the National Council of State Child Support Enforcement Administrators. We endorse quality service delivery for all children in need of child support enforcement services as administrated under Title IV-D of the Social Security Act. We recognize the importance of cost containment and goal orientation in our effort to provide a service. However, it cannot be stressed enough that to achieve the desired results, we must stablize the program's funding formula so state and local jurisdictions can concentrate on their original goal . . . to collect child support for America's children.

The following formula is a two-tier entitlement funding proposal:

A. Retain FFP at 70 percent with collections split at IV-A match rate

B. Incentive awards.

1. AFDC Cases—5 percent incentive to the state with the obligor

2. Non-AFDC cases—10 percent incentive to the state with the obligor

Additional General Provisions To The Proposal

1. Use the proposed performance audit criteria and corrective action periods to encourage program performance improvement at the state and local level.

2. State's option:

(a) Encourage states to establish separate cost centers for paternity and third party medical liability activities and remove those costs from the audit performance criteria. A special audit category could be established for paternity activities.

(b) Fees for non-ADC services.

We are of the opinion that this funding proposal would cost out similar to the program funding that will become effective October 1, 1983 . . . 70 percent FFP plus 12 percent incentive. We cannot stress enough that the potential for substantial cost increases will be inevitable if the Administration expands the program by placing additional emphasis on the non-ADC program.

We determined that the proposal would have the following impact: (1) Encourage higher child support orders; (2) Provides administrative simplicity at the state and local level; (3) Encourages states to increase non-ADC program activities; (4) Enhances interstate activities; (5) Encourages state to remove cases from the ADC program; (6) Encourages development of central registry; (7) Provides impact to the program quickly; and (8) It makes the Administration's and the Program's intent clear.

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NEW YORK, N.Y., *October 3, 1983.*

Hon. MARIO BIAGGI,
*U.S. Representative,*
*Rayburn House Office Building, Washington, D.C.*

DEAR MR. BIAGGI: I am sorry I have taken so long to write and thank you for the opportunity afforded me during the hearings held by yourself and Congresswoman Marge Roukema on the child support enforcement issue currently under consideration for badly needed reform by your committee.

As you may recall I left several pages of notes with Representative Marge Roukema that were hastily scribbled and almost unreadable outlining suggestions which I felt would be helpful in instrumenting measures that would be realistically and economically enforceable. I would like herein to re-iterate these points in a clear, concise fashion when I am not under the pressures of heated debate. You will note that I have attached as exhibit "A" entitled "An economical plan for punishment of parents who fail to support their minor children", and as exhibit "B", "suggestions for writing a law with constructive court reform measures relating to the child support enforcement cases". These are practical, common sense, and economical approaches that will serve to end what has become a financial nightmare for thousands of women and their dependent children, and now the Government as well.

All of the suggestions on the attached sheets, are productive, constructive and economical methods of penalizing these parents and will do so without further penalties to the taxpayers. It will even, in a minor manner (for I doubt if these men will give these menial chores a full measure of their talents) afford the taxpayer a savings of sorts. In other words it is a workable plan that will do a much needed job, and cost very little, or nothing, to administer. These are plain common-sense alternatives (I cannot emphasize this word enough as people seem to have lost touch with their common sense) to actual jail sentences, which would in some cases, as Representative Roukema pointed out, result in additional costs to maintain a "debt-

or's jail". However, you must have a law that the court can use to stop this abuse of the system and a plan laid out of effectively enforcing it that won't create additional financial havoc. If you will, while you are writing this law, bear in mind at all times, that you must incorporate into it the threat of loss of personal freedom. A little publicity and a few examples (on hard core cases) of the new law and the fact that it is going to be enforced will spread among these men just as easily and fast as ow to play "the court game" has in the past. When word is out that the rules of he court game" have changed and it cannot be played as usual, this abuse will disappear. It is only because it is currently played so successfully that it has so many players. It will soon become apparent that not supporting your offspring is a matter that will result in serious consequences. It is a well known fact, amcngst men who choose to avail themselves of the perogrative, that they don't really have to pay child support unless they choose to and they use this financial tool to continue to control the women and families they have left behind if they are so inclined.

This can either force the woman into another marriage, onto the welfare roles, or into working two jobs, seven days a week (depending on her health and circumstances) in my case I opted for the two job routine, and have done exactly that for the last three years and it is with that savings that I am currently paying the bills while I wait for the court to act on their own order given some four years ago.

There comes a time when a woman has to decide on staying home with her children and living off public assistance (as it is impossible to collect the child support) or going to work to feed them and let them be neglected because she is too tired and frazzled to properly care for them. The decision must be made and she decides that putting food on the table takes precedence. Being hungary is a great reality! Reams of court records and social agency files chronicle the sad, expensive results of these situations in many instances. Dreary facts that I am sure both you and Representative Roukema have become unpleasantly acquainted with. Being part of the Government Body, you can see that the children are being victimized by the vagaries of the very system that was established to protect them, and the cost of maintaining this ineffective white elephant in taxpayer dollars is staggering.

This is just like putting coal in the stove when all the windows in the room are open, you will never, never, heat the room and during the course of this idiotic pursuit you are certain to run out of coal—unless, of course, you take effective measures and do something that makes sense and close the windows: The obvious thing here is write a law that forces the courts to enforce their own orders. Tighten up the system. Again, going right to the heart of the matter, this can only be done by the threat of losing personal freedom and having an effective alternative of enforcing it that won'break the bank (or in this case, the taxpayers backs. Proposition 13 has not gone all that unnoticed by the poor souls who pass 29.1 percent of their hard earned cash over to the Government each week. Or as the IRS is well aware of the current underground economy that is flourishing in the billions as frustrated individuals seek alternatives to supporting unresponsive Government. See articles in Newsweek and Businessweek documenting the fact that our otherwise honest citizens are forced to break the law to break even each week.) This is not the way things were intended to be nor was it the intent of the Government for the courts not to enforce their own orders, but that is the way it is at this time. It must be changed.

When I say, "threat" of loss of personal freedom, it is because threaten is all you would have to do in most cases, these men aren't fools! Men that have become instantly destitute, would just as instantly surface with cash in hand. Why human nature is such I cannot say, but it does not in any way change the reality of the fact that it is. The sooner this reality is faced and dealt with, the faster this particular kind of child abuse can be stopped and this social disgrace removed from the lives of minor children who are to become our future American society.

Lets think long term, generations if you will. Lets have children who grow into healthy, whole, human beings not damaged souls who will carry unneccesary weaknesses and hurts of their childhoods into adulthood and provide us with a weakened society breaking under the weight of problems that could have been prevented if only some one would have had the guts to change the law and bring strength to a court room situation that issues marshmallow orders and dishes out jello justice: it is ludicrous, expensive, cruel, and just plain dumb!

There must be strong leadership exerted and all the good intentions and heartfelt sympathies toward the situation will not compensate for a law with a backbone in it. To accomplish this takes, strong, bold, gutzy, leadership with the will and purpose to break a destructive and ingrained pattern that prevails in family courts throughout this country before the largess of its stupidity destroys our tax base. The Government is experiencing a financial tidal wave that is threatening to swallow it

up. Four and one half billion dollars of unpaid *child* support with social programs supplementing for the absent parent are well documented facts. Good management is just that—good management! Bad management is just bad. It is that simple. The directives and motives of the court's top administrators dictate the ultimate results of the courts efforts. Were we going in the right direction I would not be spending this lovely fall afternoon composing this letter, while my court order which has accrued over the past six months continues to go uncollected in the amount (last tally) of $4,100.00 and my son remains out of school delivering Chinese food, waiting for the court to take action to collect this money so he can be returned to his school. The inane meanderings of the family court are not only financially suicidal to the Government, but the havoc they wreck on the lives of the children who become the financial hostages of their unenforced orders is unconscionable, and Judge Edith Miller, and administrators like her can never explan it away!

Judge Edith Miller in her testimony (copy attached) before the hearing committee stated page number 6, closing paragraph, "we must do everything in our power to solve this problem for all children on a national level".

Could it possibly be, that Judge Miller perceives her court to be powerless to stop this? She has the power, but the administering of her court is done in a pat, safe and politically naive manner, and I need not add an ineffectual manner; statistical proof of this has finally come home to roost. 53.3 percent of families unable to collect support monies is too large a percentage for any realistic legislator not to see that something is not working. I would venture, the all inclusive dollar amount has not even been calculated. President Reagan wants to reduce taxes: How can he, again, realistically, with this kind of waste, and this is not to mention the human waste that results from these situations. Lets stop just agreeing with each other, and do something: 53.3 percent of our families is an awful lot of people to be effected by one ineffective organization, and the fact that it is ineffective are facts that have been tossed around in the press for some time now.

Judge Miller suggested the acquisition of an accountant in the court as helpful. This would not only be helpful, but is a practical necessity. In my case, my-ex-husband is an accountant and half of the time the judges did not understand the papers he submitted to them for perusal. I assure you he could not juggle the figures on another accountant. However, having an accountant on the premises would not improve the situation if after the order is entered nothing concrete is done to enforce it and you can't escape the fact that nothing concrete in the way of enforcement imminates from the family court. You could staff the family court with the best legal minds, fine accountants, and conscientious judges, but if in the end their decisions are ignored and not enforced, to what end were their talents directed and why?

I know I continue to harp on the enforcement issue, but I have been coming to the family court for over four years now. I have made a study of the place, the people who staff it, the lawyers and judges, the politics of it, and I know where it fails. They go through all the motions, many, many court appearances, time and expense, careful attention to points of law, careful weighing of the situations and personalities involved, extreme consideration is given to the man and in my particular case my ex-husband showed up in court some half dozen times requesting postponements while he searched for an attorney, before they finally marked it "final" (A few times) and he showed up with the attorney who handles his corporate business affairs for him. Then they postponed it time and time again, my ex-husband is out of town, his attorney is engaged elsewhere, my ex-husband is out of town, his attorney is ill, my ex-husband is ill, my ex-is out of town, his attorney broke his leg (the court will accept almost any lame excuse) and on and on it went with affidavits flying back and forth between the court and my ex-husband's attorney's office and the corporation counsel's office. I have 51 pounds of files! But, and this is a mystical point, for which I would very much like to know the reasoning behind Judge Miller's excuse for letting this kind of thing go on in her court, is why, during all that time, my ex-husband was never asked, not even once, to put up any money while my son and I waited out "the court game" that his lawyer was playing with the court?

Even though every time I went to court I literally begged for money. It was truly unbelievable! By letting the court be administered in this fashion, the court actually assisted my ex-husband in his successful and willful efforts to avoid paying child support, and thereby encouraged, however unintentionally it may have been, not only his, but others like him who will successfully abuse the system and will continue to do so. This kind of court tolerated nonsense cannot be construed as anything other than poor management. These are men of means and intelligence and the very ones that there is no excuse for except just the sad fact that the law and the

court allows them to get away with it. Once the law is re-written to preclude "the court game" it will end, and not before then. The taxpayers not only wind up picking up the tab for taking care of the man's children, but they also pick up a considerable tab for the elaborate charade that plays itself out day after day in family courts all over this country.

The law already has snags in place for the small guy, payroll deductions, tax intercept etc. But for the sophisticated man of some means there is nothing to stop him, and the courts refuse to deal with him effectively in most cases. He can use his money and intelligence to successfully abuse our system and cause it to breakdown, and if he is determined enough and willing to spend the money to play "the court game" to its full conclusions, there is nothing to stop him, absolutely nothing. Nothing happens to him and his attitude towards it becomes just another annoying bit of business to be attended to.

Divorce laws have been amended in almost all States. It is no longer necessary in New York State to feign adultery in order to get a divorce as was the case not too long age. Laws just like other things need changing, amending and just plain updating. Above all, as you draft this law, remember what is at stake here. We are not writing a law to protect goldfish or turtles. No one expects turtles not to just lay their eggs in the sand and swim back out to sea and never see their young. This is the turtles society. This is not so with human young, and the society they are brought into should take measures to strengthen and protect children from parents whose instincts are to bring them into the world and then head for, be it another lifestyle, State, or female partner, without consideration of the moral obligation they have to those children. Abandoning your children to the Governments care is just a way of thinking which is wrong, and parents who do this must be re-educated, by threat if necessary, to view this in a different manner. A good, strong, enforcable law, I feel certain, would clear up the muddy minds of those that think in this careless fashion.

Please understand that I fully intend to make myslef available in Washington as this legislation is being drafted. I intend to use my efforts to see that a practical, economical and enforceable law is what the outcome of all this is. I don't want to see anymore well intentioned people making decisions about realities that they have no true understanding of. From that kind of beginning there can never grow a clear, clean, law that will be realistically enforceable. It is my hope that I will be advised of when and where the debates on this issue will be held as I shall be ready to offer my views. I would very much like to be part of something that greatly needs my ideas, experience and immediate attention. I'm a citizen of this country and I believe in it and I want to preserve it, hence my way of life. Therefore I must not turn my back when there is something about it that needs changing. It is people like me, who don't turn their backs, that make the changes—of this I am fully aware. I am all too certain that too many of us don't pay proper attention. This issue is something that has hurt and punished, unreasonably, a great many of our citizens and their children. It is wrong, and must be changed and it is in this spirit that I offer my energies, experiences, and full coopration.

Being a person who believes in the laws of the land, I will function within that framework to strengthen them rather than destroy them or become a victim of the unfairness of this particular issue. I suppose I could grab a gun and penalize my ex-husband myself for his lack of responsibility and cruelness towards his son and the fact that he has caused so much hardship in my own life. I imagine a lot of criminal activity is spawned in the venom of just this kind of frustration.

Fortunately my mind works in a more constructive and philosophical vein. My efforts will be trained on changing the law so that it will keep weaker members of our society, such as my ex-husband, from tearing it down and using it to harm and abuse his child due to his own lack of character and personal decency. It is strange when you think about it, that a very large part of human makeup is still rather primitive insomuch as it can only function effectively when under a threat of some sort or other and that certain people cannot consciously control or discipline themselves unless there is an element of fear hovering at their heels. They have to be reassured that they cannot get away with whatever rule or law they are trying to break. That is why our laws and courts must function efficiently and I am not the first to have noticed that they are not doing so. I refer mainly to the family courts as that is the one that I have had my experiences with, but from the mood of things, I have come to discover that the courts as a whole have lost their spirit and effectiveness. Perhaps its time to start with the family courts and overhaul them all.

I shall not close by wishing you the best of luck in your endeavours. Because your endeavours will ultimately effect my son's life and thousands of others as well. Too much is at stake to be left to luck alone. I shall offer something a little more con-

crete and tangible than "luck". I shall offer you the strength of my efforts towards righting a terrible social wrong that is harming our citizens.

Most sincerely,

AMY WHITEHOUSE (FOX).

EXHIBIT A.—AN ECONOMICAL PLAN FOR PUNISHMENT OF PARENTS WHO FAIL TO SUPPORT THEIR MINOR CHILDREN

Listed below are items of public service that these offenders could engage in that would save the tax payers additional expense when implementing the law which would not be the case if they were to actually be jailed. These are just ideas that have come to my mind, perhaps all of them are not practical, but then again I am sure a few of them are very practical.

(1) *Distribute Dairy Products.*—There have need newspapers full of windy descriptions of the problems associated with the distribution of the cheese, butter, milk, and other dairy products to the poor. Let these men work at the county and State level dispensing these foods to the poor. In doing so it would help alleviate the horrendous costs that are already being accrued to the taxpayers to maintain this hoard of food.

(2) *Clean up the Bronx.*—Right in Mr. Biaggi's own district, the Bronx, there are literally acres and acres of land that have been an eyesore for years. Broken glass, beer bottles, bricks and papers need to be picked up. On these acres stand burned out shells of buildings that need to either be torn down completely or boarded up for safety sake. Politicians have been whining about the cost of cleaning up the Bronx ever since I can remember, well here is free labor of the highest calibre. Having these offenders clear this land would save thousands in private funds. Sending a crew of these errant fathers up to the Bronx to clear this land would be public service of the highest order. Mayor Kock is giving tax breaks to any business that will move north of 96th Street, Maybe if the land was cleared he would not have to make a "tax free" deal to get people to inhabit the place.

(3) *Work at the Welfare Office.*—Let them process case loads. Let these men see what shirking your responsibilities does to the children they leave behind. Let them deal with women who can't feed, clothe, or shelter their children. It is a horrible feeling, I have personally experienced what it is like to let my son live elsewhere because I could not keep a roof over his head. Administering the welfare dept. requires a great amount of clerical work and costs the taxpayers a fortune, maybe a savings could be realized by utilizing the cunning of these gentlemen.

(4) *Work at the Medicaid Office.*—Let them process case loads. Perhaps some of their own children's names will be on the lists of recipients.

(5) *Work at the Food Stamp Office.*—Processing people for this program, and all of these programs requires enormous clerical endeavours and costs a lot of money to implement. Let these men help out, for in a great many cases their own families are receiving these stamps. Most of these men are bright individuals runing their own businesses and or corporations who knows they might have suggestions for improving things. It would surely make them more aware of their own actions.

(6) Pollution clean up Projects.—All over the country pollution pits, some 27 were sited in a recent article I happened upon. Send crews of these men to haul trash to land fills and in general clean up the countryside. Work out agreements with different companies that are going to have to expend large sums (i.e. chemical companies) to clean up their messes wherein the city or municipalities will supply them with labor and credit them in their efforts for hiring men who have chosen not to support their families. Let the Government give "labor credits" instead of "tax credits".

(7) *Clean, paint, and maintain public buildings.*—Jails, schools, court house, mental institutions, city hospitals and clinics and taxpayer subsidized nursing homes.

(8) *Homes for the homeless and indigent.*—Mayor Koch wants to set up such establishments, let him use this labor pool. There are some very savvy and creative individuals that could be summoned to administer this program on behalf of the city—free of cost.

(9) *Senior Citizen Homes.*—Prepare hot meals and help administer the community established senior citizen homes. There are plenty all over the country, badly straffed and in dire need of assistance and every small town has one.

These are all things that currently call for thousands of taxpayer dollars, if these men refuse to honor their families by supporting them, then let them pay by honoring society as a whole as it is this society that is supporting their children! This is only a fair exchange. However, I imagine that once a policy like this was instituted these men would start paying their child support. I know that, for one, my ex-hus-

band would not want to be up in the Bronx for 30 days picking up broken glass and beer bottles, unable to cool his heels in the sauna at the New York Athletic Club. You would never see him, or men like him engaged in such pentence. They would pay their child support realizing that the "court game", as previously played, had come to an end. But none of the above can be accomplished without the threat of loss of personal freedoms. Please don't neglect the importance of this, it will be the "teeth" of any truly effective law you write.

I hope these suggestions may prove of value.

Exhibt B.—Suggestions for Writing a Law With Constructive Court Reform Measures Relating to the Child Support Enforcement Cases

(1) *Do not let arrears mount up.*—This is the very most important suggestion I shall make. Do not, under any circumstances, let the arrears mount up past a week or two. If they never mount up, the horrendous efforts and expense to collect them will not be necessary. Now they mount up for months on end, six, seven, and ten thousand dollars worth are not unusual. Nor is at present unusual to have the court order payments of $10.00 and $15.00 a week toward payment of back support of several thousand dollars. A hopeless situation. No common sense is used in determining the payments. It is also not unheard of to have the arrears just forgiven altogether. Just completely erased away after they have mounted up and the woman and her children are once again treated as just not a very serious matter.

(2) *Cash bond deposits.*—These cash bonds are a must. Make these men deposit money with the court in the form of cash bonds, or in escrow until the trials are settled. It would greatly shorten the court cases and alleviate the court calendars considerably. If these men know they are going to have to pay anyway while they jockey around in the courts, they would quit jockeying. This would effectively remove the incentive for having a two year court battle raging at the taxpayers considerable expense and the women and children accepting welfare and other social subsidies while the court gets the matter settled.

(3) *Less judge discretion.*—Work out a formula (I have suggestions for this as well, but they are too lengthy to go into here, but I will gladly share them with you when I come to Washington) that will leave little discretion to the judges just as Rockefeller did for New York State when he made certain penalties mandatory for drug dealers. Have a program of enforcement worked out that will immediately be implemented when these men are brought to court more than three times for the same thing—non payment. Don't let them come back 36 different times and start a new court action and employ further delaying tactics.

(4) *Don't play musical chairs with the judges.*—Let one judge follow a case to its conclusion. Don't play musical chairs with the judges and the records and with each encounter the judge is forced to waste horrendous time and effort to untangle what has gone before him. It uses up his time, greatly hinders him in making a fair and equitable decision, and ultimately destroys his effectiveness. This kind of nonsense can make his job almost impossible and certainly, at the least, misdirects his energies.

(5) *Abandon hearing examiners.*—Abandon this archaic and clumsy hearing examiner encounters. This is a particularly wasteful exercise which accomplishes nothing, and only serves to delay the cases, adds to the general confusion, and God knows the court expense. These monies would be so much better directed toward maintaining accountants which as Judge Miller suggested could advise the court in many of the cases where the man suddenly becomes so improverished he can hardly find the money to fill the tank of his Mercedes.

(6) *Uniform law and procedures for all 50 States.*—Whatever law is written should be made applicable in all the States with the same penalties and rules as all the others. This is a human problem and its course is fairly predictable. It is not any different in California than in Texas or Louisana. People are people and we don't act a whole lot different whatever State we come from.

(7) *Expand the child abuse law to encompass this issue.*—As Congressman Biaggi suggested, make this a criminal offense and the act of neglect and abandonment of ones children would become, on the books of the laws of the land, a Federal crime and this form of child abuse would be given the strength of enforcement of any Federal law. I think it is serious to damage the psyches and spirits of helpless children in their tenderest years, by making them go hungry and other forms of economical deprivation. It also is indicative of a society that is letting its values go to pot.

(8) *Child's future right to sue for damages.*—Put a clause in the law protecting the child in cases when the parent leaves the country or somehow successfully eludes paying, by allowing the child in his adulthood to sue his parent who caused him great financial hardship while he was helpless to do anything about it. Make it possible for these children to at least have a "possible nest egg" waiting for them when

they are grown if they have never been taken care of as children. Write this law with everything strictly spelled out, so the lawyers can't turn it into a money making enterprise and the child won't have to give a third of it away in order to collect it. Perhaps the child could sue for something like three times the amount of the court ordered support plus interest. The child could put attachments on any inheritances or estates that the parent would come into as life rolls along. Have a form for this, keep it simple, so any fool who can read and write can fill it out and file it without going crazy trying to understand the form.

These are only some of my ideas. I have set aside $60.00 for the shuttle fare to Washington and enough for lodging in the budget motel for three nights and while I am there I will be glad to offer other ideas that have come to me from my experiences with the courts. During four long years of trying everything imaginable to collect child support, I have a pretty good insight into what is needed to get this mess straightened out.

Bear in mind, that this is a very important piece of legislation and that it effects the lives of many young individuals so we must make it effective and enforceable. You can only waste so much and then you don't have any more left—this is a simple rule of economics. We cannot afford to waste our citizens or before we know it we will not have any American society left. A rotten apple only starts with a little bruise.

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COURT OF COMMON PLEAS,
FAMILY COURT DIVISION,
DOMESTIC RELATIONS BRANCH,
*Philadelphia, Pa., October 13, 1983.*

Hon. AUSTIN J. MURPHY,
*U.S. Congress,*
*Cannon House Office Building,*
*Washington, D.C.*

DEAR CONGRESSMAN MURPHY: Attached hereto, please see copy of written statement to the United States Senate Committee on Finance for incorporation into the record of hearings re pending child support legislation.

A copy is being forwarded to you for your information and consideration.

We reiterate our dedication to the rights of all children and the IV-D Child Support Program and urge you to review these comments and support our position regarding these bills.

If you require additional information or if we may be of assistance to you, please advise.

Sincerely,

NICHOLAS A. CIPRIANI,
*Administrative Judge.*

Attachment.

STATEMENT OF NICHOLAS A. CIPRIANI, ADMINISTRATIVE JUDGE, FAMILY COURT DIVISION, COURT OF COMMON PLEAS, PHILADELPHIA, PA.

Pennsylvania led the nation in total child support collections in 1982, having collected $255 million in child suppoort for AFDC and non-AFDC cases.

The Philadelphia Family Court collected approximately $41.5 million of Pennsylvania's total collections.

Recognition of Pennsylvania's performance was afforded in the form of a letter from President Reagan to Governor Thornburgh and a plaque was presented to the Pennsylvania Courts and Domestic Relations Offices by Fred Schutzman, Deputy Director of OCSE.

The Philadelphia court, as well as other Pennsylvania Courts, has long recognized the need for a strong child support enforcement program. Our Court provided necessary services to obtain child support for all children for many years prior to 1975 when the IV-D Program was enacted as an amendment to the Social Security Act (P.L. 93-647).

Our Court is committed to an effective and efficient child support program.

It is because of our concern for the rights of all children and the future of the IV-D Program that this written statement is presented.

We respectfully request consideration of this written statement and further request its inclusion in the printed record of the hearing as stated in Press Release No. 83-183.

Recognizing that multiple bills (HR 3546, S. 1691, HR 2090, S. 888, HR 2374, HR 3545 S. 1708, HR 3354, HR 216, HR 1014, HR 955, HR 926, S. 1708, etc.) have been introduced in the House and Senate and that many of the proposals are contained in several of the Bills, the following represents our assessment and comments on the various proposals:

I RESTRUCTURING OF FEDERAL FINANCIAL PARTICIPATION

We oppose further restructuring and reduction of FFP from 70% to 60%, along with elimination of incentive payments substituting proposals of performance bonuses. Bonus proposals are not clearly defined in the pending legislation; rather they are subject to regulations of the Department of Health and Human Services, which regulations are subject to revisions. Uncertainty as to the continunity of funding has impacted adversely on the IV-D Program in the past. Continuing uncertainty and further reduction of funding exacerbates the problem since it leads to a reluctance to incur financial obligations to enhance the program. Proposals such as these contained in HR 3545 for incentive payments on cases defined as "perfect" or "adequate" would cause an onerous, unwieldy, nearly impossible system of documenting eligibility for these incentives.

Any performance award must recognize and consider variables external to the Court over which the court has no control such as the differences in caseloads in a small rural community.

Congress could consider elimination of reimbursement for indirect costs.

II STATE CLEARINGHOUSE

We oppose the concept of state clearinghouses in every state. Mandating a state clearinghouse in each state for all child support payments will result in unnecessary delays in processing payments for non-AFDC clients, thus causing unwarranted hardships. In Philadelphia (as in all other Pennsylvania counties), payments are made by the defendants/obligors to the local jurisdiction's court. These payments are posted for accounting purposes and mailed to the beneficiary of the order, i.e. to the Pennsylvania Department of Public Welfare if an assignment of support rights is in effect and to private clients in non-AFDC cases. If all non-AFDC payments received in Philadelphia must be forwarded to the Commonwealth of Pennsylvania Clearinghouse in Harrisburg, PA for duplicating posting and recordkeeeping before the state transmits the payment to the client in Phiadelphia, long delays will ensue.

It would be counterproductive for the state to maintain duplicate records already maintained by the local jurisdiction. For a state agency to maintain current, accurate records and to monitor cases would require the local court which must constantly update its own records to provide updates for all modifications, etc. of every order for maintenance of the second record at the state level. This would be not only duplicative and unproductive, it would be extremely expensive and reduce cost effectiveness.

Support by women's groups for this concept is based upon belief that a clearinghouse would improve the enforcement of orders. This is a totally erroneous belief. Enforcement action must be taken by the Courts. Notification by a state agency of delinquencies is not a solution.

The Philadelphia Family Court presently has a computerized system for complete recordkeeping of all payments. The system has the present capacity to issue automated delinquency letters.

If state clearinghouses are legislated, they should not be mandatory in all states. The statute should include provision for waivers for any state which already has satisfactory clearinghouses at the local level.

III FEES

We oppose the concept of assessing fees on non-AFDC cases. Under no circumstances should legislation authorize or permit deduction of fees from payments collected. This reduces monies which are ordered as support payments for the family and the total amount ordered should be available for distribution to the payee.

Deduction of fees could make a family eligible for welfare.

Present law and the regulations promulgated thereunder at 45 CFR 302.33 permit states to charge an application fee of $20 and to recover costs which exceed this fee from either the payor or the payee.

Notice of proposed rulemaking published in the Federal Register, September 15, 1983 (Vol. 48, No. 1801) proposes to increase the fee to $40 and further provides for

assessing additional fees for recovery of costs in non-AFDC cases, including deduction of the fee amount from support collected.

It must be noted that even an option to the states to impose fees will result in some states imposing fees for recovery of costs. This will cause severe problems in reciprocal cases where the respondent jurisdiction assesses fees which are excessive according to costs in an initiating jurisdiction.

*A. Mandatory Application Fees*

We oppose imposition of a mandatory application fee in any amount.

Child support enforcement offices should have as their primary concern, the collection of child support—not fees. Many applicants for child support services are not welfare recipients; many have little or no income and are unable to pay an application fee to obtain services. The Courts do not wish to be innundated with processing large numbers of in forma pauperis petitions to waive fees. Should a court interested in justice refuse services unless there is pre-payment of an application fee? The costs of assessing and collecting a minimal fee such as the proposed $25 fee from each non-AFDC applicant could be greater than the fees collected.

A study conducted in Pennsylvania in 1982 verified that the majority of applicants for support services were eligible for AFDC. Establishment and enforcement of support orders served to prevent many of these clients from applying for and receiving AFDC. The cost avoidance factor of such services must be considered.

Pennsylvania has not assessed fees for non-AFDC applicants and the Pennsylvania experience has proven effective.

In addition, imposition of application fees in non-AFDC cases would be class legislation and discriminatory.

*B. Collection fees on arrearages*

We oppose. Court orders of support under Pennsylvania law are based upon actual income, capacity and potential of both parents. The Court must also consider the needs and expenses of the child and both parents. Equitable support orders leave no room for an additional amount to be assessed as a penalty collection fee on arrearages. Such a fee can only result in an ultimate reduction in the amount of support received by a payee.

When arrearages have accrued under a support order, a typical enforcement technique is to order a regular amount to be paid in addition to the court ordered amount for current support. (Example—order $100 per week. Arrearage of $1,200. Order modified to provide for payments of $100 per week, plus $10 per week on arrears). Assessing a collection fee of 3 to 10% as proposed in pending legislation could result in the order being excessive. Pennsylvania law clearly prohibits orders that are punitive or confiscatory.

If collection fees cannot be added to the obligation of the payor, we feel it is unconscionable to deduct such fees from support due the family. The definitions in pending bills as to when fees would be imposed on arrearages are vague and confusing. Recordkeeping would result in bookkeeping nightmares. A sophisticated, expensive computer system would be essential for such computations.

IV. WITHHOLDING OF STATE INCOME TAX REFUNDS

We oppose legislation requiring a state income tax refund intercept. We support the federal income tax refund intercept program and have participated in this program.

However, Pennsylvania has a flat income tax. Very few refunds are generated. Statistics verify that average refunds in Pennsylvania are $24 and are made on only 29% of all returns. The administrative costs of implementing a state income tax refund intercept in Pennsylvania would exceed collections making it impossible to be cost effective.

The program has proven cost effective for some states. Therefore, federal legislation re state income tax should provide for a waiver for any state such as Pennsylvania.

V. REDUCTION OF FREQUENCY OF AUDITS

We support reduction of audits from yearly to tri-annually. Additional OCSE staff should be provided for programs and technical assistance. Compliance audits consume a disporportionate amount of staff time and are not productive. Studies in Pennsylvania have verified that collection and compliance ratios are not relative to the audit criteria.

VI. MANDATORY WAGE ATTACHMENT

We support. Pennsylvania has legislation providing for wage attachment. This has been used effectively. Philadelphia Court orders routinely include conditions such as "wage attachment to be issued upon default of three payments." This is automated with the wage attachment being generated forthwith upon the default. Currently, approximately 64% of all support collections in the Philadelphia Court are now the result of wage attachment orders.

Congress should address the potential of legislation which would authorize more effective enforcement techniques involving easy transfer of orders across state lines with the ability to have wage attachment orders follow a defendant from employer to employer.

VII. QUASI-JUDICIAL PROCESS

We support the concept. However, we request better definitions of procedures which make a state in compliance with a quasi-judicial process. We feel that Pennsylvania has a quasi-judicial process. Each county has hearing officers employed by the Court.

Procedures are mandated by the Pennsylvania Supreme Court Rules Governing Actions in Support. These hearing officers hold pre-trial conferences in all new actions for support, as well as in all cases where a petition for modification has been filed. These hearing officers are very successful in establishing support orders without appearance of the parties before a Judge. This expedites processing support cases.

VIII. EXTENSION OF FEDERAL INCOME TAX REFUND INTERCEPT TO NON-AFDC CASES

We support. As indicated above, we participated in the federal income tax program for AFDC cases and have consistently indicated support for legislation providing for intercept of refunds for non-AFDC families. This is a valuable enforcement process which should not be restricted to AFDC cases.

We support the statement of purpose in several of the bills clarifying that non-AFDC families are to be treated equally with AFDC cases.

As we have indicated, our committment to the child support program is irrevocable.

If we may be of any further assistance in clarifying any of these issues or providing further information or documentation, please advise.

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